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ABSTRACT

This report discusses various types of student codes, presents the need for such codes, outlines court challenges of these codes, and provides guidelines for drafting codes. Sample codes in the packet include citywide codes from eight cities, four Statewide policy statements, and selected model codes. (JF)

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Student Codes: A Packet on Selected Codes and Related Materials

May, 1971

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I.

AN OVERVIEW:
CODES GOVERNING RIGHTS AND CONDUCT OF HIGH SCHOOL STUDENTS
Advantages, Disadvantages and Legal Limitations

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CODES GOVERNING RIGHTS AND CONDUCT OF HIGH SCHOOL STUDENTS

Advantages, Disadvantages and Legal Limitations

Second Draft: April 15, 1971

Growing student activism in high schools seems to be inspiring the wholesale manufacture of new rules, regulations, student codes and statements of "rights and responsibilities." Many such codes were created by a few school administrators and teachers who desire to regulate the school environment in a way which would be satisfactory to them. These codes typically prescribe acceptable standards for conduct, appearance and speech. Some have been challenged in the courts and found invalid. Many remain on the books free of challenge. In contrast, students, sympathetic teachers and administrators, or lawyer's groups have also become interested in codes. The Center has had over 100 requests from students or lawyers groups for examples of codes which are fair and constitutional. Generally, the codes developed by such groups acknowledge the existence of student rights, state specific student wrongdoings, **restrict specific punishments to specific offenses, and a fair procedure to follow if a student is accused of such a wrongdoing.**

Whatever the origin, the proliferation of codes may raise several questions in the minds of students: Why should anyone want a code at all? Where do school officials get their authority to promulgate codes? What limits are there on this authority? If there must be one, what should a code say? This article aims to provide some answers to these questions. There will be a brief discussion of the case law relating to codes, but no attempt will be made here to provide an exhaustive analysis of students' rights. Finally, this article will outline the elements of a code which would recognize both the constitutional rights of students, and the school administration's duty to maintain a school which is condusive to learning.

I. Why have a code?

1. To clarify the law

At first blush, the code seems unnecessary. Teachers ought to be able to perform their function as teachers adequately by relying on already existing laws prohibiting criminal activity. Serious classroom disruptions -- threats of violence, violence, carrying drugs or weapons -- would merit a telephone call to parents or police. Conversely, students possess constitutional rights whether or not they are recited in an official Board of Education document. A code is not needed, then, unless it requires or guarantees something which is not clearly already required or guaranteed.

Unfortunately, however, the existing law governing student rights and obligations is not very clear or precise. Despite the Supreme Court decision in Tinker, upholding the right of students to express their views by wearing black arm bands,[1] lower courts have subsequently held to the contrary.[2] Despite countless cases upholding the right of students to determine their own dress and grooming styles,[3] just as many courts still permit school districts to regulate these private matters.[4] Similar judicial conflicts exist over the validity of corporal punishment.[5] A code can, therefore, define the gray areas in the law for both teachers and students.

2. To create new rights

Secondly, a code could create students rights which have never been legally established in any court. This might include the right to have a student government[6] and to participate in decisions affecting student extracurricular activities, curricula and student disciplinary procedures. It might make available grievance procedures to students who wish to bring charges against a teacher or principal. Or the code might provide for a student ombudsmen to receive complaints and seek redress for agrieved students.[7] Any number of imaginative processes could be created which give students a voice in decision-making and which provide an opportunity to learn first hand how to function within a democratic framework.

3. To create new offenses

Just as a code can guaranty rights to students which are not necessarily **guaranteed under constitutional law, it may also regulate behavior which is not** necessarily culpable under existing criminal or civil laws. In some cases the need for the regulation hardly seems to justify the restriction on the student's liberty. For example, many recent cases betray the pedagogue's penchant for restricting beards, long hair (on males at least) criticism of teachers, and political expression. To be fair, however, school officials have legitimate reasons for regulating some noncriminal conduct. A good teacher does not allow major and continued disruptions in his or her classroom, and he or she will protect students from their fellow students. Hazing, water fights, fire crackers, plagerizing -- such are the traditional foibles of mischevious students. **Respected and effective teachers and principals mete out fair punishment in these cases. The** key to reasonable rules of this type are their relevance to the essential **functions of a school.**[8]

4. To replace the "unwritten code"

A code which does no more than describe which activities will get students into what kinds of trouble may not seem advantageous to students, but it may be if school officials are enforcing their own "unwritten code" in any case. A published code at least gives a student fair warning, and it is easier to challenge in the courts. Thus, a code can help prevent teachers and principals from imposing arbitrary and ad hoc rules. This protection could be specifically included in the code. For example, the 1965 Discipline Code of the University of Oregon provides that "no sanction or other disciplinary action shall be imposed on a student . . . except in accordance with this code."[9] Although the unwritten code would probably be held "void for vagueness" once it was challenged, the uncertainty facing the student beforehand makes this a somewhat more hazardous course. In fact, some courts have upheld disciplinary procedures, even physical punishment, executed by a teacher in the absence of any specific rule.[10]

5. To spell out procedural due process

The law detailing procedural due process is fuzzy indeed. Sometimes one or two unfair elements in a whole process will be tolerated by the court, but additional unfair actions would taint the entire proceeding. An unwritten disciplinary procedure may be difficult to challenge, because its full scope may not be revealed until the next case is handled. Without a code, school officials and students must submit to the awkward and tedious trial-and-error methods of testing and retesting in order to establish what is fair and what is not. Worse, time and cost might well discourage students from asserting their rights, especially where the punishment is not too severe, or the right, not too important. Although it seems most sensible and necessary to reduce disciplinary procedures to writing, this is sometimes not done, and such an omission has not yet been declared unconstitutional by the federal courts.[11]

6. To guide teachers and students

A good code can be instructional. Teachers and students are not expected to possess a sophisticated knowledge of the fine points of constitutional law. A good code, can guide teachers in deciding what they should and should not do when faced with a disciplinary problem. Conversely, the same document, if readily available to the student, tells him what his rights are and what procedure he should follow to assert his right. The codes which are intended to be instructional should be simple in style and organization, should acknowledge existing laws and constitutional requirements, rather than try to enumerate them all, and should be widely distributed. The "Statement of Students Rights and Responsibilities" issued by the Seattle School Board does precisely this. It is on one sheet of paper, makes brief references both to existing constitutional rights of students and to criminal laws, and outlines procedural due process requirements. The discipline Code of the University of Oregon, although somewhat longer, remains clear, well organized and widely distributed.[12]

More than this, however, a good code can teach students the fundamental principals of democracy by involving them in the rule-making and decision-making processes. A good code would be promulgated and enforced with student participation. Order in the classroom is difficult to achieve where it is imposed by school authorities against the will of students. Order comes easier where students have the authority to regulate themselves. Therefore, it seems adviseable to allow students to participate in the rule-making, and adjudicatory process. This philosophy is incorporated in the code promulgated by the Board of Education of New York City, which provides that "The student government shall be involved in . . . establishing disciplinary policies."[13] It is also reflected in Philadelphia's code, which gives students "the right to participate in the establishment of regulations regarding discipline. . . ."[14] Some universities, such as Oregon, have established student courts (a majority of the members are students) hear all disciplinary cases, subject to appeal to a court comprised of half student and half faculty members.[15] The concept of including students in the actual disciplinary process has also been adapted to high schools in the model codes prepared by the Juvenile Law Center[16] and the Youth Council of San Francisco.[17]

II. Where do School Officials get the authority to promulgate a code?

Strictly speaking, public school officials[18] receive their authority to regulate student conduct either from the legislature or from parents.[19] The legislature expressly delegates authority via general or specific statutory grants. Parents, on the other hand, presumably place school officials in loco parentis when they send the child to school — public or private. The in loco parentis doctrine has become increasingly irrelevant since the advent of compulsory education laws, for children may be in school against the wishes of parents.[20] Thus, to be valid, school codes must be within the scope of delegated legislative authority and, as discussed in the next section, must not infringe unnecessarily on the constitutional rights of students, parents or teachers.

Until the 1930's, the judiciary took a narrow view of the scope of any government's authority. In school cases, this meant that the courts would strictly construe a school district's statutory authority.[21] Thus, restrictions on students' social activities have been deemed ultra vires[22] -- beyond the power of the school board -- unless the restriction was confined to that which would be necessary to assure performance of studies.[23] Other acts deemed to be ultra vires in similar decisions included requiring a child to perform chores,[24] and requiring school patrols.[25] Excessive punishment could also be deemed ultra vires, even if the school rule was itself valid. For example, in a state where the law required a flag salute in school, the court refused to permit school authorities to expel children for failure to comply, because the law provided no specific punishment.[26] This court found it unnecessary to consider the Constitutional questions. As another example, a state court has held that school officials have no authority to withhold the diplomas of students who refuse to wear caps and gowns in a graduation ceremony, although they may exclude them from the ceremony.[27]

This doctrine should not be confused with Constitutional limitations on school authorities. A school rule might be permissible under the Constitution, but it can still be invalid if the state legislature has not delegated power to school officials to pass the rule. For example, legislatures might prohibit membership in fraternal organizations by statute,[28] or expressly delegate this authority[29] but school boards, in the absence of a express law, may not.[30]

The ultra vires principal is not often cited today,[31] but it remains a sound doctrine. Although courts today are more willing to imply specific authority from general statutes, ultra vires may be a useful ground for objecting to certain school rules. For example, although not necessarily unconstitutional, it would be beyond the authority of the school board to attempt to regulate conduct of students in places and at times which are totally unrelated to school activities. Legislatures do not normally give school officials the authority which they might give to municipalities to police unlawful acts taking place outside of school. As stated in dicta in a 1967 case in Iowa:[32]

> . . . it is not within their power to govern or control the individual conduct of students wholly outside the school room or play grounds. However, the conduct of pupils which directly relates to and affects management of the school and its efficiency is a matter within the sphere of regulation by school authorities.

In effect, the *ultra vires* doctrine gives students a right to be free of school discipline in all off-campus activities. If school officials are upset by something a student has done when beyond their official reach, they should handle the matter just as they would if an adult had committed the act. That is, they should complain to the police or sue the student for tort, libel, tresspass, or whatever is appropriate. School disciplinary procedures are not appropriate for acts committed outside ths school setting.

III. Constitutional Limitations

Even if the legislature grants school officials a clear mandate to regulate specific conduct, a regulation may be unconstitutional. Both legislature and school officials must always remain within the bounds of both federal and state constitutions. Therefore, for the benefit of future code writers or revisers, examples of relevant judicial decisions which are favorable to students are summarily reviewed here.[33] Readers in need of extensive legal analysis are referred to the attached bibliography.

1. The scope of students' rights.

The Supreme Court in the landmark Tinker decision declared that "students in school as well as out of school are 'persons' under our Constitution."[34] In other words, students are people and are entitled to the full range of constitutional rights granted to any person. The student, like anyone else, does not have unfettered freedom to do as he pleases, however. For example, just as it is relevant to note that a man shouting "fire" is in a crowded theater,[35] so is it relevant to note that a person may be in a schoolhouse. The fact that the individual is a student in school does not mean he is a second-class citizen, but it does relate to the possible justification for limiting his freedom to do as he pleases.[36] The situations where it may be reasonable for school authorities to place limitations on the rights of students are limited to those situations where regulation is compelling and necessary to prevent material disruption in the class, or to prevent the invasion of the rights of others.[37] In cases involving both students' rights and a school's need for discipline, the courts must balance the competing concerns for the individual freedom of the student and need for regulation of the school environment. Of course, there is much dispute on where to draw the line.

2. Freedom of speech and press

If any constitutional right would be given priority, it should be freedom of expression. With this, students - or any citizen - have the weapon needed to secure other rights. Without it, criticism of official repression can be stilled. Few indeed are the situations where the need for regulation would outweigh the need for free and unhampered exercise of the right to free speech.

The Supreme Court reaffirmed the utmost importance of free expression for students most recently in the Tinker case, when it upheld the right of students to wear black arm bands as a symbol of their disagreement with the Viet Nam war. Other recent decisions have recognized the right of students to publish their views, even when they are critical of the school administration.[38] As in the "outside" world, freedom of speech extends to freedom from regulation of the contents of speech,[39] freedom from censorship or prior restraints on speech,[40] and freedom to distribute literature, subject only to reasonable time and place regulations.[41] It protects students in a wide range of activities from publication of underground newspapers[42] to the simple wearing of buttons[43] or arm bands.[44] It includes the right to hear outside speakers[45] and read printed matter,[46] and the right to obtain space in official school newspapers to publish views, however unpopular those views might be.[47]

To be sure, where students desire to exercise their right to free expression on school premises, school officials have a valid interest in maintaining order in the classroom during class hours, and in regulating the traffic flow in school hallways. Minor irritations are not sufficiently disturbing to warrant major punishments, however. A Houston case provides an example. An underground newspaper appeared at a Houston high school, littering the lavatories and inspiring teachers to confiscate it during class. The court ruled that this commotion was not a substantial disruption and school officials could not expel the student publishers.[48]

To sum it up, punishment for something a student had said, written, published or distributed should be viewed with the strictest scrutiny. The importance of free speech in education cannot be underestimated. Where students, teachers and general citizens are encouraged to express their views on any subject, the free flow of ideas should stimulate learning in a way never to be achieved in a less open atmosphere. Moreover, only where all citizens are free to express their beliefs, can democracy reach its full potential. Therefore, the exercise of the right to free speech should be encouraged in children and young adults, particularly in school. This nation cannot expect its young citizens to emerge into the adult world and contribute fully to the workings of a democratic government if they have been taught only to parrot their teachers.

3. Freedom of assembly and association.

The case law is less clear when defining the right of a student to engage in demonstrations free of reprimand, or to obtain official blessings for student organizations. Where free speech rights are not in jeopardy, the courts seem more willing to allow restrictive school measures. Of course, participation in a peaceful demonstration is very much akin to the exercise of free speech, and is entitled to much the same protection as free speech.[49] However, where the demonstration is disorderly, or clearly could become disorderly, the **courts will undoubtedly uphold school disciplinary measures taken against demonstrating students.**[50]

The right of students to associate together is indisputable,[51] of course. However, in a 1915 decision (Waugh v. Board of Trustees), the Supreme Court held that a university could refuse admission to anyone who would not sign a pledge repudiating membership in a fraternity.[52] Although not overruled, this case has been distinguished recently in the lower federal courts in a variety of situations. In departing from Waugh, courts first of all have required equal treatment of student groups, if any are recognized at all. School officials may not selectively refuse official status only to these groups which have sponsored unpopular causes. For example, in deciding against southern school officials who refused recognition to a local chapter of ACLU, a federal court noted that the school recognized other political groups (e.g., the Youth Republican Club and Young Democratic Club).[53] Second, as pointed out in another case, political organizations are entitled to greater protection under the First Amendment than are social organizations, and Waugh is not entirely relevant. This court overruled officials who had denied recognition to an independently organized Students for a Democratic Society. The court ordered a hearing on the matter, noting that if substantial evidence was produced to show that the club had "violent activism" as a purpose, the university could exclude it. The court said:[54]

> No student group is entitled, per se, to official college recognition. Rather, once a college allows student groups to organize and grants these groups recognition, with the attendant advantages, constitutional safeguards must operate in favor of all groups which apply. This requires adequate standards for recognition and the fair application of these standards.

Although these are cases involving colleges, the principles apply to high schools as well. If students are sufficiently mature to desire to organize a group, school officials should be sufficiently mature to state a rational and fair basis for identifying those groups which will be "recognized" by the school.

4. Freedom from vague, uncertain or overly broad regulations

Worse than a restrictive regulation, a vague regulation of uncertain scope might effectively block the free exchange of ideas which should flourish in any school. These ambiguous and uncertain rules are invalid. Thus, a university rule prohibiting "misconduct" has been held void for vagueness.[55] In another case, a court held "unduly vague, uncertain and ambiguous" a dress code which provided that "students are to be neatly dressed and groomed, maintaining standards of modesty and good taste conducive to an educational atmosphere. It is expected that clothing and grooming not be of an extreme style and fashion."[56] In the Houston case, the only written rule which school officials could invoke against students for distributing their underground newspaper provided that: "The school principal may make such rules and regulations that may be necessary in the administration of the school and in promoting its best interests. He may enforce obedience to any reasonable and lawful command."[57] The regulation was ruled "void for vagueness."[58] The court held that students are entitled to "a rule which is drawn so as to reasonably inform the student what specific conduct is prescribed."[59]

Often times this infirmity (vagueness or overbreadth) appears at the statutory level. The laws of many states allow suspension or expulsion from school for "misconduct," or where student conduct is not in the "best interests" of the school. Where state laws are this vague, school officials ought to promulgate more narrow and specific rules defining "misconduct" and "best interests."[60] If they do not, both regulation and law should be challenged.[61] The most insidious situation of all occurs where there are no regulations at all, but school officials nonetheless punish students willy-nilly. Few censorship laws could be more chilling in their effect on free speech than an "unwritten code" proscribing any expression or activity which meets the arbitrary disapproval of an omnipotent school official. Students and lawyers should examine existing school codes, and where needed, obtain revisions so that they proscribe only specific, serious offenses or in the alternative, the codes can be challenged in the courts.

5. A right to privacy in personal affairs

Inside and outside of the school setting, the scope of an individual's right to privacy remains mostly undefined. The most frequent type of school case concerns hair and grooming regulations. Many courts have found that the penumbra created by the First and Ninth Amendments includes a right to privacy which allows the individual student to determine his appearance; hair and grooming restrictions invade a sphere which is of a peculiarly personal and private nature.[62] Just as many courts have held to the contrary.[63] The Supreme Court has denied certiorari in these cases, despite the eloquent objection of Justice Douglas who found it shocking that school officials would attempt to control so personal a matter.[64] The student's right to keep his own personal space inviolate is likewise unclear. One one hand, a state court has ruled that a child has a cause of action for trespass against a teacher who searched his person on mere suspicion, or if the search was for the benefit of someone else (e.g., another child who alleged that a theft had taken place).[65] Likewise, the right to privacy has been extended to a student's living quarters so that the unwarranted search of a dormitory room would require the exclusion of illegally seized evidence in a criminal case.[66] At least one court has recognized that "university students are adults. The dorm is a home and it must be inviolate against unlawful search and seizure."[67] On the other hand, however, courts have been reluctant to extend this protection to the lockers of high school students, on the grounds that the lockers belong to the school, not the student.[68] Until decisions like these are reversed in the higher courts, students would be wise to treat their lockers as public rather than private places.

Outside the school setting, intrusions into the personal life of a student most certainly seem invalid as an infringement of the right to privacy.[69] However, in view of the uncertainty of the case law in this area, a student might be well-advised to also cite the rule against unauthorized regulations and to invoke the equal protection clause of the Fourteenth Amendment. Although privacy is at stake, most of the cases upholding the right of students with children, or married or pregnant students to remain in school have been decided on one of these two grounds.[70]

6. A right to procedural due process

The courts have uniformly held that the rudiments of due process are required before severe disciplinary action can be taken against a student. Generally, due process includes at least the right to advance notice of charges, and an opportunity to present a defense. The definitive statement of minimal requirements was issued in *Esteban* v. *Central Missouri State College*: According to the court in *Esteban*, due process requires adherance to the following rules:

(1) a written statement of the charges should be furnished prior to the date of a hearing; (2) a hearing should be conducted before the individual ultimately responsible for student conduct; (3) students should be permitted to inspect in advance any affidavits or exhibits which school officials intend to use at a hearing; (4) students should be permitted to have counsel present; (5) students should be afforded the right to present a defense to charges against them and to present affidavits, exhibits, and witnesses if they so desire; (6) students should be permitted to hear the evidence presented against them, and students (not their attorney) should be allowed to question any witness who gives evidence against them; (7) the hearing officer should determine the facts of each case solely on the evidence presented at the hearing and should state in writing his finding as to whether or not the student charged is guilty of the conduct charged; (8) either side may, at its own expense, make a record of the events at the hearing. This list from *Esteban* seems to be universally accepted by the courts. Unfortunately, some procedural safeguards which are available as a matter of course in a criminal or quasi-criminal proceeding were not required. As a result, the courts seem to be splitting hairs in deciding such items as right to

to counsel in student disciplinary proceedings. The court in Esteban conceded that counsel should be present, but limited him to advising the student. Counsel was not to question witnesses, a task which was assigned to the student.[72] In another case, where school officials had obtained a senior law student to "prosecute" other students, the court ruled that accused students had a right to have counsel actively represent them.[73] Some courts have denied a right to counsel on grounds that proceedings were "investigatory" or "preliminary."[74] Others have found the outcome of very similar proceedings to be clearly punitive, however, and have upheld a student's right to counsel.[75] The Supreme Court in In re Gault ruled that a youth in juvenile court has a right to counsel, regardless of the noncriminal nature of the proceedings.[76] Given the very serious consequences of expulsion from school, it would seem that Gault should logically be extended to school disciplinary proceedings where expulsion or long-term suspension may be an outcome.[77]

The privilege against self-incrimination has fared no better. Research for this article uncovered only one case in which the court recognized the liklihood that school officials might intimidate students while investigating a situation.[78] Certainly, a student's confession which is obtained by an insistent and overbearing school official should be viewed to be even less certain than the confession of an adult facing a police shake-down. Even if the privilege against self-incrimination is not legally applicable in student disciplinary proceedings, it would seem that officers hearing student disciplinary cases should give little weight to those confessions obtained from students before they have been apprised of their rights or before they have had an opportunity to consult with a lawyer or any other person.

Finally, almost no attention has been given to the situation where the same school officials act as accuser, prosecutor, judge, jury and executioner.[79] Even if due process were limited to criminal cases, the chances for bias or error in such proceedings should be examined. It may be a mistake to distinguish rules of due process simply because they were formulated in criminal cases. Where the rules were developed in an effort to maintain objectivity and aid in the search for the true facts of a case, they offer sound guidelines for student disciplinary cases as well.

IV. Drafting a Code

When the time finally comes to sit down and draft a code, what should be done" First, it seems eminently sensible for school officials to encourage the students themselves to draft the code. Student involvement at this initial, creative stage will foster a better understanding among students for the disciplinary process, and indeed, for the machinery of democracy itself. Since internally motivated discipline is the most durable and long-lasting, the student-drafted code is likely to be more effective than even the most elegantly-worded code superimposed on student life by school officials. The final result would not simply be a code; it would be an educational experience for students; it would give students a stake in the successful enforcement of the code; and it could promote good relationships between students and school officials, who are no longer viewed as arbitrary authoritarians.

Once assembled, students should have an opportunity to consult with teachers and lawyers, of course, and they probably should examine examples of codes from other jurisdictions. (This student codes packet was prepared to make this first task easier.) The next logical step would require a survey of the law relating to students rights, with emphasis on the local jurisdiction. Lawyers would be helpful at this stage. They can instruct the students on such items as the statutory grounds for expulsions or long-term suspensions and the nature of local judicial decisions. Depending on the state of the law locally, it may or may not be necessary to spell out certain rights. For example, in New York, the courts and the State Commissioner of Education have ruled against restrictive grooming codes, and knowledge of these decisions is widespread. Therefore, a general reference to constitutional rights is all that is necessary; a specific reference to hair length is excess verbiage. On the other hand, if there is a widespread violation of specific rights, the code would help instruct teachers and administrators if it contained specific references to the invalid practice. In this situation, legal advisers to the students might supply annotations to be included in the code.

After this initial homework has been done, students and their advisers are ready for drafting. Generally, the code should be simple and brief. If it is to serve well as an instructive device for students and school officials, it must be widely distributed; a single-sheet leaflet is an ideal size.

The code should contain three basic sections - (1) students rights, (2) rules of conduct and sanctions for violations, and (3) hearing procedures.

The rights section would best begin with a very general statement about the applicability of state and federal constitutions. It seems adviseable not to detail these rights, to avoid narrow interpretations which are limited to the specific rights mentioned. It might be helpful to refer to Tinker and similar cases; if desired specific rights should be set forth only as examples, or the code might provide that constitutional rights "include but are not limited to" the certain listed rights. The code would also guarantee students rights which they do not otherwise have. The code would provide for an elected, representative student government, and briefly describe the power and authority of this body. The student government might be given a voice in curriculum, the extra-curricular program, teacher evaluation and disciplinary proceedings. Finally, there would be a provision for reasonable time and place regulations for the exercise of free speech rights.

Use of the school paper, bulletin boards, loud speakers, the school's p.a. system, hallways etc. should be allowed, free of prior restraints at times and in places where it would involve no disruption to the educational activities of the school.

Second, the code would logically specify which misdeeds will get students into what kinds of trouble. Severe punishment (expulsion or long-term suspension) should always be limited to the statutory grounds; these may be more limited than required by state law, but they may not be broader. Many educators feel that expulsion should never be used and long-term suspensions should be limited to a few specific occasions where the student's misconduct involved serious injury to persons or property and took place on school grounds or at a school-sponsored activity. The code might provide for short-term suspensions for specific disorderly acts which have created a "substantial disruption" at the school. Finally, it might allow teacher suspensions of not more than one-class hour for substantial disruptions in a single class. Even if the code is drafted by students, it must remain within the confines of the constitution of course. Vague statements should be avoided. Punitive action for speaking, writing or distributing literature is invalid. Therefore, the rules of conduct should forbid specific acts and must not invade constitutionally protected rights.

Third, the code would outline the elements required in a disciplinary hearing. The elements of due process should be present in any hearing where the student may be expelled or suspended for any length of time. Right to counsel should be guaranteed in these serious situations. The hearing board should be an impartial body which has not had prior contact with the subject matter of the proceeding. Preferably, the hearing board would include student representatives who were chosen in some fair and impartial manner.

When a good draft is ready, the code must be taken to the School Board for approval. If the drafters have done their initial work well, they have frequently consulted with the board's counsel and with as many board members as possible. Sympathetic teachers and administrators have been contacted early in the development of the code, and their support has been enlisted. Community organizations have been asked to lend support. If this preliminary work has been done, neither the school counsel nor board members will be surprised or embarrassed on the day the code appears before them and they are likely to be cooperative. However, if early attempts to enlist the aid of these figures have failed, the students seeking adoption of a code must follow a more difficult path. They should consult with the lawyers advising them and enter into negotiations with the board. While the board has the power to pass or not pass the code, the students have the power to bring a law suit, or to appeal to the general public. If the board is elected, students might also enter the political arena and help defeat the most recalcitrant board members. Board members who realize that the students could take any of these actions will probably be ready to negotiate, before it becomes necessary to carry out threats of this nature.

P.M.L.

FOOTNOTES

1. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1966).

2. In *Butts v. Dallas Indep. School Dist*. 306 F. Supp. 488 (N.D. Tex. 1969)The court distinguished *Tinker* on grounds that evidence of potential disruption justified the ban. In *Williams v. Eaton*, 310 F. Supp. 1342 (D. Wyo., 1970), the court did not even cite *Tinker*, *supra* note 1, let alone attempt to distinguish it. The court never reached the merits, but based its decision on lack of jurisdiction due to 1) conflict with the Eleventh Amendment, and 2) an insubstantial and speculative claim for damages. In so holding, the court ruled that it would violate freedom of religion provisions in the state and federal constitution to allow plaintiffs to protest in this way at a football game. The court cited only cases involving religion and not speech.

3. *E.g.*, *Kahl v. Breen*, 296 F. Supp. 702 (W.D.Wis.), *aff'd*, 419 F.2d 1035 (7th Cir. 1969), *cert. denied*, 398 U.S. 937 (1970); *Richards v. Thurston*, 304 F. Supp. 449 (D. Mass. 1969) (male hair length), *aff'd*, 424 F.2d 1281 (1st Cir. 1970); *Watson v. Thompson*, ____F. Supp.____ (E.D. Tex. 1971) (39 LW 2394); *Crossen v. Fatsi*, 309 F. Supp. 114 (D. Conn. 1970) (beard and mustache); *Dunham v. Pulsifer*, 312 F. Supp 411 (D. Vt. 1970) (barring long-haired male student from athletic activities not permissible); *Reichenberg v. Nelson*, 310 F. Supp. 248 (D. Neb. 1970) (hair or beard growth); *Sims v. Colfax Community School District*, 307 F. Supp. 485 (S.D. Iowa 1970)(hair length of female student); *Olff v. East Side Union High School District*, 305 F.Supp. 557 (N.D. Calif. 1969) (male hair length, court relies on free speech rights); *Westley v. Rossi*, 305 F. Supp. 706 (D. Minn. 1969) (Male hair length); *Miller v. Gillis*, 315 F. Supp. 94 (N.D. Ill. 1969) (same); *Hopkins v. Ayres*, ____F. Supp.____, No. WC 6974-S (N.D. Miss. Oct. 25, 1969) (same); *Zachry v. Brown*, 299 F. Supp. 1360 (N.D. Ala. 1967) (same, equal protection grounds).

4. *E.g.*, *Ferrell v. Dallas Indep. School Dist.*, 261 F. Supp. 545 (N.D. Tex. 1967), *aff'd*, 392 F.2d 697 (5th Cir. 1968) (2-1), *cert. denied*, 393 U.S. 856 (1968) (Douglas, Dissenting); *Griffin v. Tatum*, 425 F.2d 201 (5th Cir. 1970) (Court upheld lower court's finding that hair rule was unconstitutional as applied to plaintiff (boy with blocked hair) but overruled part of lower court decision invalidating entire regulation, leaving longer hair unprotected.); *Davis v. Firment*, 408 F. 2d 1084 (5th Cir. 1969) (per curiam); *Jackson v. Dorrier*, 424 F.2d 213 (6th Cir. 1970), cert. denied, ____U.S.____ (1971); *Stevenson v. Wheeler County Board of Education*, 306 F.Supp. 97 (S.D.Ga. 1969), *aff'd*, 426 F.2d 1154 (5th Cir. 1970); *Lindsey v. Guillegeau*, ____F. Supp.____ (N.D. Ga. 1970); *Bishop v. Colaw*, 316 F.Supp. 445 (E.D. Mo. 1970); *Carter v. Hodges*, 317 F. Supp. 89 (W.D.Ark. 1970); *Farell v. Smith*, 310 F. Supp. 732 (D. Me. 1970); *Brownlee v. Bradley County*, 311 F. Supp. 1360 (E.D.Tenn. 1970) (no evidence to show the hair style in question conveyed an opinion); *Schwartz v. Galveston Independent School District*, 309 F. Supp. 1034 (J.D.Tex. 1970); *Giangreco v. Center School District*, 313 F. Supp. 776 (W.D. Mo. 1969); *Brick v. Board of Education*, 305 F. Supp. 1316 (D. Colo. 1969); *Crews v. Clones*, 303 F. Supp. 1370 (S.D. Ind. 1969).

5. Compare *Murphy v. Kerrigan*, civ. action no. 69-1174-W (D.C. Mass.) (consent decree) June 3, 1970 (forbidding corporal punishment in Boston) with cases cited note 11 *infra*.

6. See e.g., School District of Philadelphia, Bill of Rights and Responsibilities for High School Students, adopted Dec. 21, 1970; City School District of New York, Rights and Responsibilities of High School Students, Sept. 1970.

7. See, e.g. School District of Philadelphia, *supra*.

8. This was the "controlling premise" behind the promulgation of the 1965 University of Oregon Code, which began with the general policy that:

> The University may apply sanctions or take other appropriate action only when student conduct directly and significantly interferes with the University's (a) primary educational responsibility of ensuring the opportunity of all members of the University community to attain their educational objectives, or (b) subsidiary responsibilities of protecting the health and safety of persons in the University community, maintaining or protecting property, keeping records, providing living accomodations and other services, and sponsoring non-classroom activities such as lectures, concerts, athletic events, and social functions.

For a discussion, see Linde, Campus Law: Berkeley Viewed from Eugene, 54 Calif. L. Rev. 40, 67 (1966).

9. *Id.* at 52.

10. See *Indiana State Personnel Board v. Jackson*, 244 Ind. 321, 192 N.E. 2d 740 (1963); *Fertich v. Michener*, 111 Ind. 472, 14 N.E., 68 (1887); *Deskins v. Gose*, 85 Mo. 485 (1885). The School Board had a statutory duty to make rules, but did not. Held, the teacher may punish a child who starts a fight on his way home.

The test has traditionally been whether a teacher's action was reasonable. In *Andreozzi v. Rubano*, 145 Conn. 280, 141 A. 2d 638 (1968), the court held that a teacher may slap a student to restore order, but not to punish him, since the rules allowed only the principal to mete out corporal punishment.

11. In one federal district court case, the judges did acknowledge the wisdom and fairness of putting these rules in writing: "We strongly recommend that disciplinary rules and regulations adopted by a school board be set forth in writing and promulgated . . .," but they upheld the expulsions of college students. Zanders v. Louisiana State Board of Education, 281 F. Supp. 747, 761 (W.D. La. 1968).

12. A copy can be found in *Linde*, *supra* note 8 at 67-73

13. New York City Board of Education, Rights and Responsibilities of Senior High School Students, July, 1970.

14. School District of Philadelphia, Bill of Rights and Responsibilities for High School Students, Dec. 21, 1970, Section 6.

15. University of Oregon, Code of Student Conduct, Part I, sec. 6, as amended July 1, 1970, and part F, as amended March 4, 1970.

16. National Juvenile Law Center, St. Louis University, High School Disciplinery Statute, Feb. 12, 1971.

17. City-wide Youth Council of San Francisco, Student Rights and Responsibilities Manuel for the San Francisco Unified School District, final draft (1971).

18. In addition, the authority of a private school to regulate student conduct may be based on a contractual theory. See *Robinson v. Miami*, 100 So. 2d 442 (Fla. App. 1958); *Carr v. St. John's University*, 17 App. Div. 2d 632, 231 N.Y.S. 2d 410 (1962). The contract terms may be found in bulletins and college catalogs. *Stein v. New York Educ. Comm'r*, 271 F. 2d 13 (2d Cir. 1959). See also Comment, Private Government on the Campus -- Judicial Review of the University Expulsion, 72 Yale L.R. 1362 (1963).

19. See Goldstein, The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis, 117 U. Pa. L. Rev. 373, 373-387 (1969).

20. See Buss, Procedural Due Process for School Discipline: Probing the Constitutional Outline ____Pa. L. Rev. ____(1971)(to be published soon). See also *Breen v. Kahl*, 419 F. 2d 1034, 1037-38(7th cir., 1969), *cert. den.* 398 U.S. 937 (1970):

> "Since the students' parents agree with their children that their hair can be worn long . . . in the absence of any showing of disruption, the doctrine of "in loco parentis" has no applicability.

". . . the doctrine /of *in loco parentis*/ is of little use in dealing with our modern 'student rights' problems." *Zanders v. Louisiana State Board of Education*, 281 F. Supp. 747, 756(W.D.La. 1968)(college case).

21. See, e.g., *Matthews v. Board of Education of School District No. 1 of the City and Township of Kalamazoo*, 127 Mich. 530, 86 N.W. 1036 (1901) (striking down a school board requirement making vaccination a prerequisite to attending school in the absence of express statutory authority); *Rhea v. Board of Education of Devils Lake*, 41 N.D. 449, 171 N.W. 103 (1919) (Same); but cf. *Johnson v. City of Dallas*, 291 S.W. 972 (1927).

22. *Dritt v. Snodgrass*, 66 Mo. 286, 27 Am. R. 343, (1877) (dicta); *State v. Osborn*, 32 Mo. App. 536 (1888).

23. *Mangum v. Keith*, 147 Ga. 603, 95 S.E., 1 (1918).

24. *State v. Board of Education of the City of Fond du Lac*, 63 Wis. 234, 23 N.W. 102 (1885).

25. Opinion of the Deputy Attorney General to the Superintendent of Public Instruction Re Student Patrols, 11 Pa. Dist. and County Rep. 660 (1929).

26. *Commonwealth v. Johnson*, 309 Mass. 476, 35 N.E. 2d 801 (1941).

27. *Valentine v. Indep. School District of Casey*, 191 Ia. 1100, 183 N.W. 434 (1921).

28. *Waugh v. Board of Trustees of the University of Mississippi*, 237 U.S. 589 (1915).

29. *Hughes v. Caddo Parish School Board*, 57 F. Supp. 508 (W.D. La. 1945), *aff'd*, 323 U.S. 685 (1945).

30. *Wright vs. Board of Education of St. Louis*, 295 Mo. 466, 246 S.W. 43 (1922). But see *Coggins v. Board of Education of City of Durham*, 223 N.C. 763, 28 S.E. 2d 527 (1944).

31. It was cited in *Alvin Independent School District v. Cooper*, 404 S.W. 2d 76 (Tex. 1966) (exclusion of a mother of a child held *ultra vires*) and applied in *Sullivan v. Houston Independent School District*, 307 F. Supp. 1328, 1340, 1345 n.1 (S.D. Tex. 1969) held, off-campus activities in distributing underground paper are not within the reach of the school board.

32. However, the court permitted the school board to maintain a rule which barred married students from participation in extracurricular activities. *Board of Directors of the Independent School District of Waterloo, Ia. v. Green*, 259 Ia. 1260, 147 N.W. 2d 854 (1967).

33. For lawyers seeking case law and authority, a collection of recent case briefs on students rights is available from the center on request.

34. *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503 (1968). See also, e.g. *Scoville v. Board of Educ.*, 425 F. 2d 10, 13 (7th Cir. 1970), *cert. denied*, ____ U.S. ____ (1971). *Dunham v. Pulsifer*, 312 F. Supp. 411, 417 (D. Vt. 1970); *Sims v. Colfax Community School Dist.*, 307 F. Supp. 485, 487 (S.D. Ia. 1970); *Sullivan v. Houston Indep. School Dist.*, 307 F. Supp. 1328, 1339 (S.D. Tex. 1969).

35. "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." *Schenck v. United States*, 249 U.S. 47, at 52 (1919) (Justice Holmes).

36. *Breen v. Kahl*, 419 F. 2d 1034, 1036 (7th Cir. 1969), *cert. denied* 398 U.S. 937.

37. *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 513 (1968). See also *Aguirre v. Tahoka Indep. School Dist.*, 311 F. Supp. 664 (N.D. Tex. 1970) (The wearing of brown armbands, even with a few incidents, was protected expression of disatisfaction in the school's treatment of Chicanos). But *cf. Esteban v. Central Missouri State College*, 415 F. 2d 1077 (8th cir. 1969), *cert. denied*, 398 U.S. 965 (1970), where the court refused to extend *Tinker* to a case involving "aggressive violent demonstration." *Id.* at 1087.

38. Scoville v. Board of Education, 425 F. 2d 10 (7th Cir. 1970) rev. 286 F. Supp. 988 (N.D. Ill. 1968), cert. denied, ____U.S.____(1971); Aguirre v. Tahoka Indep. School Dist., 311 F. Supp. 664 (N.D. Tex. 1970) (brown arm bands were worn to express dissatisfaction with school policies); Sullivan v. Houston Indep. School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969).

39. Eg. Tinker v. Des Moines Ind. Community School Dist., 393 U.S. 503, 511 (1968).

> "Students in school as well as out of school are persons under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress 'expressions of feelings with which they do not wish to contend.'"

Scoville v. Board of Educa., 425 F. 2d 10 (7th Cir. 1970). Two high school students sold copies of their off-campus paper which contained critical remarks on school officials. The court held that "the reference undoubtedly offended and displeased the dean. But mere expressions of the students' feelings with which school officials do not wish to contend . . . is not the showing required by the Tinker test to justify expulsion." (Punctuation omitted.) Id. at 14. Some of the contents of the paper might also have been considered in poor taste. Scoville is a typical case where contents of speech disturbed school officials.
See also, Riseman v. School Committee of Quincy, ___F. 2d ____ (1st Cir. 1971); Antonelli v. Hammond, 308 F. Supp. 1329 (D. Mass. 1970); Sullivan v. Houston Indep. School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969).

40. Cases cited note 39 supra. In Riseman v. School Committee of Quincy, ____F. 2d ____(1st Cir., March 11, 1971), in upholding the right of students to be free of censorship of written materials prepared by them, the First Circuit ruled that, "no advance approval shall be required of the content of any such /student/ paper . . . /or/ any written forms of expressions." See also Brooks v. Auburn University, 412 F. 2d 1171 (5th Cir. 1969), aff'g. 296 F. Supp. 188 (M.D. Ala. 1969). The court enjoined university officials from barring a speaker who had been invited by a student organization. The lower court observed that "speech may not be restrained in advance except when there is a clear and unmistakable determination that the speaker will violate the law.... Id. at 197. The circuit court agreed.

41. *De Anza High School Students Against the War* v. *Richmond Unified School District*, N.D. Calif. No. 1074, 1971; *Mt. Edan High School Students Against the War* v. *Hayward Unified School District*, N.D. Calif. No. 1173, 1971; *Rowe* v. *Campbell Union High School District*, N.D. Calif. No. 51060, 1970; *O'Reilly* v. *San Francisco Board of Education*, N.D. Calif. No. 51427, 1970. A state statute and local school board regulations prohibiting distribution of literature on school grounds were declared unconstitutional. The school boards were directed to prepare new regulations governing first amendment regulations. (A copy of the new San Francisco regulation is included in the Center's Student Codes Packet.) See also *Sullivan* v. *Houston Ind. School Dist*., 307 F. Supp. 1328 (S.D. Tex. 1969(. School officials attempted to expel two high school students for distributing "Pflashlyte" a newsletter which critized school officials. They passed out copies in the halls of their school between classes, at a local shopping center and at other commercial establishments. There was some evidence that the newsletter disturbed the classroom in minor ways: students left copies in the wrong places, a few students were caught reading it during class and teachers were often confiscating copies. The Court ruled that 1) the school had no business attempting to regulate off-campus student activity and 2) the on-premises activities involved such little interference with the learning process that disciplinary action against the distributors was unwarranted.

42. *Eg*. *Sullivan* v. *Houston Ind. School Dist*., 307 F. Supp. 1328 (S.D. Tex. 1969); *Scoville* v. *Board of Education*, 425 F. 2d 10 (7th Cir. 1970), *cert*. *denied*, ___U.S.___(1971).

43. *Blackwell* v. *Issaquena County Board of Education*, 363 F. 2d 749 (5th Cir. 1966). The court held that the wearing of "freedom," "SNCC" or "One Man One Vote" buttons was expression and protected under the First Amendment. The court ruled in favor of students who had been disciplined for wearing such buttons. But see *Burnside* v. *Byars*, 363 F. 2d 744 (5th Cir. 1966). The court found that the button-wearing had produced serious disruption in the school and upheld the regulation.

44. *Tinker* v. *Des Moines Community School Dist*., 393 U.S. 503 (1968); *Aguirre* v. *Tahoka Ind. School Dist*., 311 F. Supp. 664 (N.D. Tex. 1970); But see *Einhorn* v. *Maus*, 300 F. Supp. 1169 (E.D. Pa. 1969). Plaintiffs wore armbands bearing the inscription "humanize education" during graduation ceremonies. They were unable to obtain an injunction forbidding school authorities from recording this event in their school record and communicating it to colleges.

45. *Brooks* v. *Auburn University*, *supra*; *Stacy* v. *Williams*, 306 F. Supp. 963 (N.D. Miss. 1969 , 312 F. Supp. 742 (N.D. Miss. 1970).

46. Cf., Vought v. Van Buren Public Schools, 306 F. Supp. 1388 (E.D. Mich 1969). A student was suspended for possession of admittedly obscene materials. The court held that the First Amendment did not protect him, but after a hearing, the court overruled the suspension on due process grounds. At the hearing the student's lawyer produced materials from the school library -- including an issue of Harper's Magazine and Salinger's Catcher in the Rye -- which contained the same obscenity ("fuck"). The court could resolve the inconsistency and ruled for the student.

47. Lee v. Board of Regents of State Colleges, 306 F. Supp. 1097 (W.D. Wis. 1969), advertising space to publish views on Viet Nam; Zucker v. Panitz, 299 F. Supp. 102 (S.D.N.Y. 1969)(same).

48. Sullivan v. Houston Ind. School Dist., 307 F. Supp. 1328 (S.D. Tex. 1969).

49. Saunders v. Virginia Polytechnic Institute, 417 F. 2d 1127 (4th Cir. 1969). The court held that denial of readmission to school because of participation in an orderly demonstration was unconstitutional.

50. See eg. Esteban v. Central Mo. State College,415 F. 2d 1077 (8th Cir. 1969), cert. denied, 398 U.S. 965 (1970). The court held that the First Amendment does not protect "actual or potentially disruptive conduct, aggressive action, disorder and disturbance, and acts of violence and participation therein . . . ." Id. at 1087.

51. See e.g. Shelton v. Tucker, 364 U.S. 479 (1960). A state statute requiring teachers to disclose every organization they belonged to in the last five years was held unnecessarily broad in light of the purpose served. See also NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958); Bates v. City of Little Rock, 361 U.S. 516 (1960).

52. Waugh v. Board of Trustees, 237 U.S. 589 (1915) (Held, state may prohibit fraternities at a state university. Plaintiff who would not sign pledge could be refused admission); See also Hughes v. Caddo Parish School Board, 57 F. Supp. 508 (W.D. La. 1944), aff'd, 323 U.S. 685 (1945) (upholding state law prohibiting high school fraternities).

53. American Civil Liberties Union of Virginia v. Radford College, 315 F. Supp. 893 (W.D. Va. 1970); The court granted declaratory relief to ACLU, which had been denied official recognition at the school. The court noted that the college recognized other political groups (The Young Republican Club and The Young Democratic Club) and found that non-recognition of ACLU violated the First Amendment rights of students wishing to associate with ACLU. See also Healy v. James 311 F. Supp. 1275 (D. Conn. 1970).

54. Healy v. James, 311 F.Supp. 1275, 1281 (D. Conn. 1970).

55. Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wis. 1968), aff'd 418 F.2d 163 (7th Cir. 1969).

56. Crossen v. Fatsi, 309 F. Supp. 114 (D. Conn. 1970).

57. Sullivan v. Houston Ind. School Dist.,307 F. Supp. 1328, 1345 (S.D. Tex. 1969).

58. Id. at 1344-45.

59. Id. at 1344.

60. Id. at 1344-45. See also Smith v. University of Tennessee, 300 F. Supp. 777 (E.D.Tenn. 1969): The court ruled void as unduly vague and overly broad certain campus rules relating to outside speakers. The court also struck down a requirement that a speaker invitation and its timing must be "in the best interests of the University."

61. See e.g. Snyder v. Board of Trustees of the University of Illinois, 286 F. Supp. 927 (N.D. Ill. 1968). A three-judge court struck down as vague and overly broad an Illinois law which barred "any subversive, seditious, and un-American organization" from "the use of any facilities of the of the University for the purpose of carrying on, advertising or publicizing the activities of such organization." See also Dickson v. Sitterson, 280 F. Supp. 486 (M.D. N.C. 1968) (Same)

62. Cases cited note 3 , supra.

63. Cases cited note 4 , supra.

64. Ferrell v. Dallas Indep. School Dist., 393 U.S. 856(1968).

65. Phillip v. Johns, 12 Tenn. App. 354 (Ct. App. 1930).

66. People v. Cohen, 57 Misc. 2d 266, 292 N.Y.S. 2d 706 (Sup. Ct., 1968).

67. Id. at 57 Misc. 2d at 373, 292 N.Y.S.2d at 713.

68. E.g., People v. Overton, 24 N.Y.2d 522, 249 N.E.2d 366, 301 N.Y.S.2d 479 (1969), habeus corpus denied sub nom, Overton v. Rieger, 311 F. Supp. 1035, (S.D.N.Y. 1970) (appeal pending). Police detectives, under authority of a search warrant which was later found to be invalid, searched a student's locker. In subsequent proceedings the youth moved to suppress evidence (marijuana) found there. The evidence was allowed to stand on the grounds that the principal of the school had authority to give, and did give permission for the search. The Supreme Court had remanded Overton v. New York 393 U.S. 85 (1968) for further consideration in light of Bumper v. North Carolina, 391 U.S. 543 (1968). The New York Court of Appeals adhered to its decision and found Bumper not applicable; See also Kansas v. Stein, 203 Kans. 638, 456 P.2d 1 (1969), cert. denied, 397 U.S. 947 (1970) (A principal opened a student's locker at the request of police; motion to suppress incriminating evidence denied); In re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (Ct. App. 1969) (same).

69. See e.g. Mindel v. U.S. Civil Service Commission, 312 F. Supp. 485 (N.D. Calif. 1970). Held, termination of a postal clerk's appointment because he was living with a woman violates his right to privacy.

70. E.g., Alvin Ind. School Dist. v. Cooper, 404 S.W. 2d 76(Tex. 1966) (exclusion of a mother of a child, held ultra vireg); Ordway v. Hargraves, civ. action no. 71-540-C (D. Mass. Mar. 11, 1971). (39 L.Week 2551) (exclusion of unmarried pregnant girl); Johnson v. Board of Education of the Borough of Paulsboro, Court order, civ. action no. 172-70 (D.N.J., April 16, 1970); (held, violation of their right to equal protection to forbid married students to participate in extra-curricular activities); Perry v. Grenada Municipal Separate School District, 300 F. Supp. 748 (W.D. Miss. 1969). (No rational basis for excluding students solely on the grounds that they were unwed mothers); Board of Education of Harrodsburg v. Bentley, 383 S.W. 2d 677 (Ky. 1964) (held, unreasonable and arbitrary" to require married students to withdraw from school for at least one year).

71. Esteban v. Central Missouri State College, 277 F. Supp. 649 at 651-52 (W.D. Mo. 1967), aff'd. 415 F. 2d 1077 (8th Cir. 1969), cert. denied, 398 U.S. 965 (1970). Accord Woods v. Wright, 334 F. 2d 369 (5th Cir. 1964); Vought v. Van Buren Public Schools, 306 F. Supp. 1388 (E.D. Mich. 1969); Sullivan v. Houston Indep. School Distr., 307 F. Supp. 1328 (S.D. Tex. 1969); Knight v. Board of Education, 48 F.R.D. 108 (E.D.N.Y. 1969).

72. Esteban v. Central Mo. State College, 277 F. Supp. 649; aff'd, 415 F. 2d 1077 (8th Cir. 1969), cert. denied, 398 U.S. 965 (1970).

73. French v. Bashful, 303 F. Supp. 1333 (E.D. La. 1969).

74. Madera v. Board of Education of City of New York, 386 F. 2d 778 (2d Cir. 1967), rev'g, 267 F. Supp. 356 (S.D.N.Y. 1967), cert. denied, 390 U.S. 1028 (1968) (no right to counsel in guidance conference); Barker v. Hardway, 283 F. Supp. 228, 238 (S.D.W.Va. 1968), aff'd, 399 F. 2d 638 (4th Cir. 1968) (per curiam), cert. denied, 394 U.S. 905 (1969) (no right to counsel in a hearing before an "advisory" and "investigation" body).

75. Geiger v. Milford Independent School District, 51 D. & C. 647 (Pa. County Ct. 1944) (expulsion); Goldwyn v. Allen, 54 Misc. 2d 94, 281 N.Y.S. 2d 899 (Sup. Ct. 1967). In Goldwyn, the State Department of Education barred a student from participation in the Board of Regents examination (prerequisite to a state diploma, and to gaining scholarships and university admissions) on receipt of a letter from an acting principal that the student had cheated in one of the examinations. There was a review of the matter later by the assistant superintendent of the district. Counsel was not allowed to participate. The court ordered the student reinstated, and her record expunged, because among other reasons, counsel was denied at a punitive hearing.

76. In Re Gault, 387 U.S. 511 (1967).

77. See Buss, Procedural Due Process for School Discipline: Probing the Constitutional Outline, ___ Pa. L. Rev. __ (1971).

78. See Goldwyn v. Allen, 54 Misc. 2d 94, 281 N.Y.S. 2d 899 (Sup. Ct. 1967).

79. This issue came up in Wasson v. Trowbridge, 382, F. 2d 807 (2d Cir. 1967). The court held that a cadet had a right to challenge the composition of a panel which decided to expel him, to show possible bias. An academy regulation required that members of the panel be free of prior connections with the case. But see Jones v. Tennessee Board of Education, 279 F. Supp. 190 (M.D. Tenn. 1968), aff'd, 407 F. 2d 834 (6th Cir. 1969), granted, 396 U.S. 817 (1969), writ dismissed as improvidently granted, 397 U.S. 31 (1970) (Justice Douglas and Brennan, dissenting). Two members of the faculty advisory group who adjudicated the case testified against the students. The court ruled that this "in itself" was not sufficient to constitute a denial of due process. Id. at 200. Cf. Pickering v. Board of Education, 391, U.S. 563, 578 N. 2 (1968) (dictum) (teacher dismissal).

Bibliography

SELECTED AND ANNOTATED BIBLIOGRAPHY
STUDENT RIGHTS AND REGULATION OF STUDENT CONDUCT

Abbot, C. Michael, *Due Process and Secondary School Dismissals*, 20 Case W. Res. L. Rev. 378 (1969) (23 pp.)

The author's primary purpose in this article is to relate the college rights cases to high schools. He also observes that the "culturally deprived students who will most often face school dismissal are apt to be the ones least able to afford it." (*Id.* at 65). He rejects the *in loco parentis* doctrine as presently very unenlightening to courts (How can a white-middle class teacher be seen as *in loco parentis* to a black ghetto student?).

Ackerly, Robert L., *The Reasonable Exercise of Authority, the National Association of Secondary School Principals*, Washington D. C., 1969.

This contains an outline of procedural and substantive rights guaranteed to students under the Constitution, and a discussion of landmark cases. This is a useful document to cite when dealing with school officials, because it was produced under the auspices of a professional organization.

Alderich, Ann N. and JoAnne V., Sommers, *Freedom of Expression in* Secondary Schools, 19 Cleveland St. L. Rev. 165 (1970) (12 pp.)

The authors review *Guzick v. Drebus*, Memorandum Opinions & Order, No. C 69-209, United States District Court for the Northern District of Ohio, Western Division May 6, 1969 (Case No. 19,681, on appeal to the United States Circuit Court of Appeals for the Sixth Circuit. They find it remarkably similar to *Tinker*. In *Guzick* the court ruled in favor of the school authorities because of a peculiar and "tense" racial situation. They note that the ruling in *Guzick* and *Tinker* differ not so much in theories of law as in theories of education.

Aspelund, Carl L., Constitutional Law - Free Speech Rights of School Children, 16 Loyola L. Rev. 165 (1960)(12 pp.)

The author identifies and discusses three theories lating to students' rights in a simple manner which might be most useful to nonlawyers. He identifies and discusses three theories under which schools may justify their disciplinary actions: 1) *in loco parentis*, 2) contract and 3) the need "to maintain an atmosphere which is conducive to study and learning." He discusses political expression, religious activities, grooming codes and procedural due process.

William J. Brennan, Jr., Education and the Bill of Rights, 113 U. Pa. Law Rev. 219 (1964) (8 pp.)

This is a general discussion on the need for more effective teaching of the bill of rights in the schools. Justice Brennan recommends a joint effort by lawyers and educators.

Buss, William, G., Procedural Due Process for School Discipline: Probing the Constitutional Outline, Pa. L. Rev. (1971) (This will be published soon).

Professor Buss has produced a comprehensive and extremely well-documented survey (over 500 footnotes) of the law on procedural due process. Particularly helpful are the discussions on the rights which are not yet clearly required of school officials by the courts. For example, Buss sees the right to counsel in school administrative proceedings as the next logical step in the line of cases from *Gideon* to *Gault*. He criticizes the *Madera* decision and other similar decisions where a student disciplinary hearing was treated as an "investigatory" proceeding and right to counsel was denied. The section on a student's right to a fair and impartial tribunal is also enlightening. As Buss points out, the same school officials often perform multiple-functions in disciplinary proceedings - rule maker, accuser, prosecutor, and adjudicator. Finally in his discussion on corporal punishment, Buss concludes that is of limited value and ought not take place until a full hearing has been held.

Comment, Admissibility of Evidence Seized by Private University Officials in Violation of Fourth Amendment Standards, 56 Cornell L. Rev. 507 (1971) (12 pp.), commenting on Moore v. Student Affairs Committee 284 F. Supp 725 (M.D. Ala. 1968); People v. Cohen 57 Misc. 2d 366, 292, N. Y. S. 2d 706 (Dist.Ct. 1968); and nine other cases.

The author discusses the appropriateness of cooperation between a private school and the police. He concludes that where there is acknowledged cooperation of police and school officials, "evidence seized by university officials in violation of fourth amendment standards should be inadmissible in subsequent criminal proceedings." Id. at 518.

Comment, Constitutional Law - Due Process Does Not Require That a Student Be Afforded the Right to Counsel at a Public School Suspension Hearing 22 Rutgers L. Rev. 342 (1968) (19pp.)

The author criticizes Madera v. Board of Educ., 386 F. 2d 778 (2d Cir.1967) cert.denied, 390 U.S. 1028 (1968) and the result, which was to deny counsel at a guidance conference. The author proposes that counsel be allowed, and notes that the state would not have to provide counsel to indigent since they could seek the aid of legal services offices.

Comment, Constitutional Law - Right To Counsel - Student Held Entitled to Counsel at Public School Disciplinary Hearing 42 N. Y. U. L. Rev. 961 (1967) (6 pp.), commenting on Madera v. Board of Educ., 267 F. Supp. 356 (S.D.N.Y. 1967) rev'd, 386 F.2d. 778 (2d Cir. 1967), cert. denied, 390 U.S. 1028 (1968) and four similar cases.

The author examines Madera in the light of cases such as In re Gault and In re Groban, and concludes that the child's interest should outweigh the state's, and that the right to counsel should be given to the child.

Comment, The Fourth Amendment and High School Students, 6 Willamette L. J. 567 (1970) (9 pp.), commenting on Burdeau v. McDowers, 256 U.S. 465 (1921).

The author finds that the courts have relied on three basic arguments to uphold the propriety of a search by school officials: 1) the school official is acting as a private citizen and is beyond the Fourth Amendment, 2) the school official is *in loco parentis*, or 3) school officials may give the police the authority to conduct a search because they have custody and control of the building. The author disagrees, and suggests that school officials should be considered public figures (agents of the State) or agents of the police. He challenges the *in loco parentis* doctrine - "School administrators simply do not have the same power over students that parents exercise over their children." (*Id.* at 571). He also points out that the invocation of the doctrine in search cases is extremely new and without historical precedent.

Comment , Public Schools, Long Hair and the Constitution, 55 Iowa L. Rev. 707 (1970) (11 pp.) commenting on eight constitutional cases relating to student rights.

This article suggests that dress should be protected as symbolic speech. Some reliance is placed on earlier Supreme Court decisions (*e.g.* Pierce v. Society of Sisters) which contained strong language against "enforced conformity" in the academic world.

Comment, Search and Seizure: Is the School Official A Policeman or Parent? 22 Baylor L. Rev. 554 (1970) (6 pp.) commenting on Mercer v. State, 450 S.W. 2d 715 (Tex.Cir.App. 1970 *n.w.h.*).

The article discusses the search by a principal of a high school student believed to possess marijuana, the court upheld the search, based on the *in loco parentis* doctrine. The author suggests that upon receiving credible information of possession of marijuana, the principal should call the authorities rather than make his own search.

Cutlip, James, Symbolic Speech, High School Protest and the First Amendment, 9 J. of Family L. 119 (1969)

The author analyses the symbolic expression in wearing long hair and concludes that *Tinker* "may prove relatively insignificant," because Fortas expressly ruled out applicability to cases involving "aggressive disruptive actions or even group demonstrations", and "other forms of expression, such as hair styles and types of clothing."

Denno, Theodore F., Mary Beth Tinker Takes the Constitution in School, 38 Fordham L. Rev. 35 (1969) (28 pp.)

This discusses Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) and reviews free speech rights of students generally.

Frey, Martin A., The Right of Counsel in Student Disciplinary Hearings, 5 Valparaiso U. L. Rev. 48 (1970) (23 pp.)

This article examines the right to counsel in the university setting. Professor Frey maintains that Dixon V. Alabama State Bd. of Educ., does not require a full evidentiary hearing in every situation. If there is a hearing, Frey states that " the most important criteria with which to judge the fairness of a particular hearing are 1) whether the student is subject to severe injury, 2) whether the university will proceed through counsel and 3) whether the student has the ability to defend himself." He finds students, administrators and lawyers "reluctant to extend the right to counsel" to a right to appointed counsel.

Gaddy, Dale, Rights and Freedoms of Public School Students: Directions from the 1960s, Nat'l Organization on Legal Problems of Education, Monograph No. 2 (1971) (60 pp.).

The author concludes that there is judicial support for maintaining students freedom of nondisruptive, symbolic and written expression, the right to refuse to wear required gym clothing, the right of female students to wear slacks to school, the right of male students to wear long hair under most circumstances, the right to be free of religious overtones in education, freedom from racial discrimination, the right to procedural due process, certain off-campus freedoms, and the right of married students and unwed mothers to stay in school.

Goldstein, Stephen R., Reflections on Developing Trends in the Law of Student Rights, 118 U. of Pa. L. Rev. 612 (1970) (9 pp.)

The author sees a trend away from the deference traditionally given by judges to administrative decisions by school officials.

He traces this to reduced faith in the administrative process, to a new doubt in the efficacy of public school systems, and to greater judicial involvement in education. He concludes that the new judicial stance will require factual justification for school rules, especially where the sanctions involve long-term suspension or expulsion, or where the rule impinges on a student's freedom of expression or right to privacy.

Goldstein, Stephen R., The Scope and Sources of School Board Authority to Regulate Students Conduct and Status: A Nonconstitutional Analysis, 117 U. Pa. L. Rev. 373 (1969) (58 pp.)

This is a comprehensive study of the legal basis for public school regulations. The author believes two basic rationales may lead courts to uphold school regulations in the absence of a specific statute: 1) school authorities act in loco parentis and thus have plenary power over students while they are in school,2) the legislature has delegated authority through general authorization statutes. He concludes that under either doctrine, disciplinary action must have a reasonable relationnship to the school authority's legitimate function to either 1) educate the students or 2) act as a host to students (and protect one from another).

Heyman, Ira Miachel, Some Thoughts on University Disciplinary Proceedings, 54 Calif. L. Rev. 73 (1966) (15 pp.).

Heyman reviews the operation of an *ad hoc* disciplinary committee created at Berkeley in response to the original student crisis at Berkeley. He recommends procedures for a decision-making body which is independent of any university administrative office.

Hollister, C. A. and P.R. Leigh, The Constitutional Rights of Public School Students, Oregon School Study Council Bulletin, vol. 14, No. 6 (Feb. 1971) (40 pp.)

The authors discuss federal judicial decisions relating to freedom of religion in the schools, free expression, the dress codes and procedural due process. In discussing dress codes, where legal authority is divided, the authors conclude that school officials must be prepared to defend their restrictive codes in court, and they point out that "it may well be that in the process of becoming entangled in such public controversies, the stature and authority of some of those who direct our public schools may be diminished more so than if such a dress code had never been instituted." Id. at 32.

Howard, A.E.Dick, Goodby Mr. Chips: Student Participation in Law School Decision-Making, 56 Va. L. Rev. 895 (1970) (27 pp.)

This author discusses the practical reasons for inviting students to participate in law school decision-making. There is no discussion of participation in the regulation of conduct as such, however.

Hudgins, Jr., H.C. Academic Freedom and the Student Press, 6 Wake Forest Intramural L. Rev. 40 (1969) (22 pp.)

This article examines the question of college officials' control of student publications; whether there should be any control, and the problem of protecting the first amendment of the students.

Hudgins, H.C. Jr., The Discipline of Secondary School Students and Procedural Due Process: A Standard, 7 Wake Forest L. J. 32 (1970) (17 pp.)

This article traces the change in school discipline from when courts based decisions on reasonableness of the rule to now, when courts are considering the individual's rights under the First and Fourteenth Amendments. He sees courts placing an increasing burden of proof on school administrators.

Linde, Hans A., Campus Law: Berkeley Viewed from Eugene, 54 Cal. L. Rev. 40 (1966)(33 pp.)

Linde discusses the university of Oregon Code, which he believes to be reasonable and fair, unlike rules promulgated at Berkeley. (The Oregon Code was drafted with the participation of law school faculty.)

Martin, Elisa M., *The Right to Dress and Go to School*, 37 U. Colo. L. Rev. 492 (1965) (8 pp.)

This author maintains that the school (as agency of the state) has no right to dictate rules of hair and dress unless "they are in the interest of the safety, welfare or morals of the other pupils."

Nahmod, Sheldon H., *Beyond Tinker: The High School as an Educational Public Forum*, 5 Harv. Civ. Rights-Civ. Lib. L. Rev. 278 (1970) 23 pp.)

The author reviews recent lower court decisions involving speech and symbolic speech on college campuses and high schools. He concludes that although public officials have a valid interest in operating schools in an orderly manner, the First Amendment protects peaceful protest directed against school authorities, peaceful demonstrations and underground newspapers. He notes officials may regulate traffic on University premises, however.

National Education Association, *Task Force on Student Involvement, A Proposed Position Statement on Student Rights and Responsibilities*, (October, 1970, working draft) (42 pp.) (Available by writing to the NEA, 1201 16th St. N.W., Washington D. C. 20036).

This document is a legal memorandum on the relationship between school and child. It discusses the right to access to school, the right to affect the education process, the right to keep certain information confidential, freedom of association, student government, and freedom of expression. Finally, there is a section on disciplinary procedures. The legal analysis is excellent, and the fact that this document was generated by a professional organization makes it a valuable reference to cite when negotiating with professionals.

New York Civil Liberties Union, *Student Rights Handbook New York City* (19 pp.). (Available by writing to N. Y. C. L. U., 84 Fifth Avenue, New York, New York 10011).

This pamphlet which was prepared for high school students, lists students' substantive and procedural rights under New York law. Cases and Administrative decisions are cited to support conclusions.

Note, A Re-evaluation of School Appearance Regulations As Free Choice in Grooming Accorded Constitutional Protection? 15 S. Dak. L. Rev. 94 (1970) (19 pp.)

This discussion of the long hair cases reviews the constitutional issues and the school's right to promote discipline. The author favors the approach taken by the Fifth Circuit in Breen v. Kahl, and suggests that the school must produce evidence to show how many students are likely to be distracted by the prohibited hair style, how often distraction would take place, how quickly they would get used to it, and how the distraction affects learning. Id. at 111.

Note, High School Hair Regulations, 4 Valparaiso L. Rev. 400 (1970) (17 pp.)

This note discussed the split in the courts over the validity of school grooming codes. The author concludes that where courts will uphold the student's right to determine his own appearance, it will be more frequently based on the due process and equal protection clauses of the 14th Amendment, rather than on free speech grounds. He notes that the Supreme Court in TInker implied that long hair would not be equated to pure speech. The author predicts that the Supreme Court will eventually review the question and strike down restrictive codes.

Note, Parental Right to Inspect School Records, 20 Buffalo I. Rev. 225 (1970) (17 pp.).

The author believes that a "parent's right to inspect the school records of his child is related to a deeply rooted right of citizens to inspect public documents of many kinds." Id. at 255. He discusses New York cases -- (Appeal of Thibadeau and Van Allen v. McCleary). He notes that Van Allen rested its argument on common law in the absence of statutes or rules. "Van Allen merely asserted that the right exists and proferred reasons, grounded in common law, for justifying it. It did not attempt to define that right." Id. at 265. He suggests that "This parental quest for information is related to a general right-to-know interest which has found expression in certain areas of the law, especially as manifested by Section 3 of the Adminstration Procedure Act, as well as the first amendment of the U.S. Constitution." Id. at 270.

Note, The Procedural Rights of Public School Children in Suspension Placement Proceedings, 41 Temp. L. Q. 349 (1968) (10 pp.)

This note discusses the standards for judicial review of procedures in suspending a child and placing him in a special school; it concentrates on explaining Madera v. Board of Education, 267 F. Supp. 356 (S.D.N.Y. 1967) rev'd, 386 F. 2d 778 (2nd Cir. 1967) cert. denied, 394 U.S. 905 (1969). The note concludes that "Once the fairness of the procedure is established, any review of the process should be limited to questions of arbitrariness or abuse of discretion by the Board." Id. at 358.

Note, Public Secondary Education: Judicial Protection of Student Individuality. 42 So. Calif. L.Rev. 126 (1968) (20 pp.)

The author discusses the reasoning in banning sororities and fraternities and finds it unfounded. There is also a discussion of student's right to determine their own appearance.

Note, School Expulsions and Due Process, U. Kans. L. Rev. 108 (1965) (5 pp.)

This note discusses which criminal law due process requirements are relevant in student disciplinary actions.

Note, A Short History and Future Developments Regarding School Dress and Grooming Codes, 31 Ohio St. L. J. 351 (1970) (13 pp.)

After reviewing the cases, the author points out that long hair may have been disruptive at one time, and that other forms of dress -- involving nudity or near nudity -- may still be disruptive. Id. at 356-7. He concludes that it would be most useful for a school to provide an environment for new concepts and divergent ideas; and that most due process objections could be met "by guaranteeing students their right of due process in formulating regulations, such as the dress and grooming codes."

Note, Symbolic Conduct, 68 Colum. L. Rev. 1091 (1968)

The author reviews cases where conduct may be protected expression under the First Amendment. He proposes criteria for determining when conduct should be equated with speech, and for weighing the public interests which may justify limitations on the symbolic conduct.

Note, Uncertainty in College Disciplinary Regulations, 29 Ohio St. L. J. 1023 (1968) (15 pp.)

This note discusses the constitutional prohibition against vague and overbroad regulations. He criticizes rules requiring "acceptable" conduct, "proper" conduct and "good taste."

Phay, Robert E., Suspension and Expulsion of Public School Students, Nat'l Organization on Legal Problems of Educ., Monograph no. 3 (1971) (42 pp.).

Phay discusses what kinds of activity warrant suspension and expulsion, the need to communicate restrictions to students in clear, explicit language, and the procedural due process requirements that must be followed. He believes that long term suspension or expulsion is justified only in cases where the student misconduct involves "substantial and material" interference with the educational process. He belives that accidental damage and minor deliberate damage (e.g., defacing a book or carving on desks)is not grounds for long term suspensions. On the other hand, he believes that possession of weapons, threats to the safety of others, and participation in dangerous out-of-school activities which may directly influence school welfare (e.g., possession or sale of narcotics) may warrant the more severe forms of discipline.

Ray, Martfort S., Constitutional Law - A Student's Right to Govern His Personal Appearance, 17 J. Public L. 151 (1968) (24 pp.)

This discussion of restrictions on hair styles outlines some of the ways a court may avoid deciding such a case on its merits. A test of "reasonableness," for example is often cited to avoid reaching the merits. He prefers the case-by-case approach exemplified by the Fifth Circuit's treatment of Burnside and Blackwell. Finally, he argues that the right to control personal appearance is part of a student's constitutional right to privacy.

Reeves, Clifford Lee, The Personal Appearance of Students - The Abuse of Protected Freedom, 20 Ala. L. Rev. 104 (1967) (10 pp.)

Mr. Reeves concludes school officials may make rules, but not if they limit personal liberty. Dress codes may be invalid 1) if there is symbolic expression involved,,2) if due process is not followed, 3) if the code invades the penumbra of freedoms guaranteed by the bill of rights or 4) if equal protection is violated. He points out that judges should recognize changing trends in fashion or appear terribly wrong in later years. (He cites in Pugsley v. Sellmeyer 158 Ark. 247 250 S.W. 538 (1929), the court sustained a regulation prohibiting the wearing of transparent hosiery, low-cut dresses, or face powder or cosmetics). He also suggests that if a fracas results because a student wears long hair, those who start the fracas are to blame.

Schwartz, Herbert T., The Student, the University and the First Amendment, 31 Ohio St. L. Rev. 635 (1971)(52 pp.).

The author examines existing law relating to first amendment rights and possible rationales for limiting these rights. He rejects the tradisional view that the university may control the everyday life of a student, his public expressions, his organizations, his right to hear speakers. He finds the in loco parentis doctrine not relevant. (Parents could not expel a student from school.) He then discusses a variety of student problems involving freedom of association, loyalty oaths, access to school facilities, invitations to controversial speakers, censorship, etc.

Sherry, Arthur H., Governance of the University Rules, Rights, and Responsibilities,54 Calif. L. Rev. 23 (1966) (17 pp.).

This is a brief, early review of the rule-making authority of the University and the requirements for procedural due process.

Wright, Charles, Alan, *The Constitution on the Campus*, 22 Vand. L. Rev. 1027 (1969) (61 pp.).

The basic thesis of this article is that the constitution is and should be applicable to the university. He discusses the whole spectrum of student rights in this context.

April 29, 1971

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Smart, Jr., James M., The Fourteenth Amendment and University Disciplinary Procedures, 34 Mo. L. Rev. 236 (1969) (24 pp.).

The author sees a shift in judicial attitude in student rights cases. He notes that the two most important developments are 1) courts now require that fundamental procedural safeguards be afforded to a student threatened with expulsion or suspension, and 2) the federal courts will now take jurisdiction when there is an unreasonable interference by the university with the exercise by students of constitutionally protected freedom.

Twohig, Jr., R. Raymond, Uncertaintly in College Disciplinary-Regulations, 29 Ohio St. L. J. 1023 (1968) (15 pp.).

The author declares that the application of the "vagueness and over-breadth" doctrine to school rules is essential if other new-found rights are to have vitality. First amendment freedoms, especially, are jeopardized if they may be denied whenever a speech or editorial is found to be not "acceptable" nor locally "proper." He refers to the Univeristy of Oregon's code as adequate for disciplinary purpose without being vague or overbroad.

Van Alstyne, William W., Student Academic Freedom and the Rule-Making Powers of Public Universities: Some Constitutional Considerations, 2 L. in Transition Q. 1 (1965) (35 pp.).

Van Alstyne briefly reviews cases from 1891 to the present and points out that many of them by today's standards involved a violation of the Fourteenth Amendment. In reviewing more recent cases he decides that equal protection (rather than substantive process) is the appropriate constitutional doctrine to invoke. First, the doctrine of "unconstitutional conditions" is reviewed - a governmental benefit may not be conditioned upon the waiver of an essential right. Under this doctrine, the University has the burden of justifying its rules by showing that they are reasonably related to a legitimate university function. He concludes that this protects the study in many situations, but does not extend as far at the broader concept of equal protection whcich appears in Brown v. Board of Educ. or Griffin v. Illinois. A reasonable relation was insufficient in these cases. He believes that these cases and their progeny would require the following considerations: 1) the importance of the interest the school wishes to protect, 2) the importance of the interest adversely affected, 3) the strength of the connection between the basis for the classification in the rule and the interest to be protected, and 4) the availability of alternatives in achieving the same goal.

III. Commentary on Codes included in the Packet

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Commentary of Codes Included in this Packet

City-wide Codes

1. Seattle School Board (p. 65)

The Seattle "Statement of Rights and Responsibilities " was developed with the participation of school officials, students, lawyers, and other interested persons. School officials requested students from Seattle high schools to submit drafts; the final code was an almagamation of these separate submissions, and was done by school counsel with the aid of volunteer lawyers. When the Seattle Board adopted the statement, it also created a representative Student Senate which now has responsibility for revising the statement, subject to Board approval.

The statement is a convenient one-sheet pamphlet which is both instructional and which clarifies certain rights which are not firmly established by law. It is instructional in that it recognizes that students have constitutional rights and briefly reviews prohibited activities in the state and city's existing criminal codes (arson, carrying firearms, unlawful "interference" or "intimidation of school authorities"). It goes beyond the existing criminal laws and specifies additional areas of misconduct which will be subject to disciplinary action (smoking on school property, dress which presents a health or safety problem, conduct which materially and substantially interferes with the deducation process, refusal to identify oneself on school grounds). It clarifies the rights of students in certain areas by detailing specific free speech and free press rights. It also details search and seizure rules (a warrant is not required but "reasonable cause" is necessary). Finally it outlines procedural due process requirements for disciplinary hearings (fairness, written notice of charges, right to counsel, right to present a defense, right to question witnesses, etc.). It fails to specify which offenses merit the more serious punishments, however. Compare with the model code drafted by the Juvenile Law Center, below.

2. Philadelphia (p. 69)

The Philadelphia Board of Education adopted a statement at a meeting December 21, 1970. The first demand for this code came from students involved in a controversy at one of the city's high schools one and one-half years before. School officials appointed a committee of students, parents, teachers, principals and administrative staff to develop a code. Public hearings were held on the initial draft and the views of many organizations , including the local bar association were solicited. The final code included as commentary many policies already adopted by the board.

The code first recognizes the first amendment rights of students. It goes beyond the constitution, however, and guarantees students the right to an elected, representative student government at every school. The code authorizes the student government to create the office of ombudsman. The ombudsman could be anyone in or out of school, who is elected by the students. The student government also has the power to appoint student representatives to take part in decisions on curriculum and disciplinary regulations. The code also protects students in areas where the law is not clear. It guarantees, for instance, that "Academic performance shall be the only criterion for academic grades," and it bars corporal punishment.

The board also approved a memorandum which elaborates on the provisions of the code, setting forth rules on use of bulletin boards; distribution of printed materials and petitions; weraing of buttons and badges; the organization of student government; and chartering of clubs. It also further describes the ombudsman and his duties, prohibits certain kinds of punitive actions by teachers and makes a grievance procedure available to students. Finally, it outlines procedural safeguards for expulsions, and long-term suspensions, including notice, the right to present a defense, right to counsel, and right to cross-examine witnesses.

3. New York City (p. 85)

To provide background on the origins of the New York City Board's statement, a memorandum by a student (pp.) and a student-drafted bill (pp.) precede the city's adopted statement in this packet. The student bill specifies a number of free expression rights and guarantees due process in expulsion procedures. It does not specify or limit the situations where expulsion would be appropriate. (Compare with the model code of the Juvenile Law Center, below.) The student code apparently assumes that school officials may compose rules and regulations — (see Due Process, Section 1(a)). The main thrust of the code, as explained by the student memorandum, was to establish a student government and equip it with real powers and authority.

The Statement finally adopted by the Board in September, 1970, included provisions for a representative student government, with some but not all of the powers originally contemplated. Certain free expression rights are spelled out. Only a little is said about procedural due process which is guaranteed by state law in New York.

4. San Francisco (p. 99)

The San Francisco Board adopted new rules on distribution of literature on March 31, 1971. Previous rules had been declared unconstitutional. *O'Reilly* v. *San Francisco Unified School District*, N.D. Calif., no. 51427.(1970). It guarantees first amendment rights to wear buttons and badges, to post literature or hand it out and to circulate petitions. The rules have reaonable housekeeping provisions (time and place regulations).

5. Pittsburgh (p. 101)

Pittsburgh has no statement of student substantive *rights*, in which case these rights extend to those provided in state and federal constitutions. Pittsburgh does have a code prohibiting specific acts of misconduct and another bulletin outlining procedural requirements in dealing with misconduct. Teachers and principals are given authority over lesser problems. Principals may suspend students for no more than three days, and must comply with certain requirements involving notice to the parents, holding a conference, etc. Finally, principals may initiate a suspension, transfer or expulsion by referring the matter to the Area Superintendent. In these more severe cases, stricter procedural rules apply, depending on the length of suspension. In long term suspensions, these include requirements of notice, hearing, access to records, right to a representative (who may be a lawyer), right to confront and question specific guarantee of right to counsel, but a student is allowed an "adult representative" if his parent cannot attend. The Center plans to challenge these disciplinary procedures in the courts.

The District has also separately promulgated a dress code requiring pupils to be "neat, clean and appropriately dressed." Like the proscribed "misconduct" in Soglin v. Kauffman, supra, these terms are vague and uncertain in their meaning, and leave it up to school officials to determine what is "appropriate." They are also subject to challenge on other grounds. (See the Center's Student Rights Packet.)

8. Colorado Springs (p. 139)

Excerpts from the Colorado Springs Policy are included to illustrate unnecessarily harsh disciplinary rules. Students may be expelled for over 18 specific offenses, including relatively minor offenses such as "vulgar and profane language" or "tardiness." (See Section E (15)) Expulsion for some of these offenses may exceed the Board's statutory authority (See Section B) under the ultra vires rule. Moreover, the list is not exclusive; school officials are free to impose additional regulations at any time. Such a blanket authorization may be unconstitutionally vague and overbroad. See Sullivan v. Houston Independent School District, 307 F. Supp. 1328, 1345 (S.D.Tex., 1969). The court also suggested that this might constitute an invalid delegation of board authority to school principals. Id. at n.1. Finally, the code contains no recognition of existing student rights, except for two nonfunctional sections -- one of which prohibits suspensions for political or religious activities unless they violate a school rule. The open-ended reference to school rules may also be void for vagueness. Moreover, these sections fail to extend to the full range of rights contemplated by the Constitution and, therefore, are of no value to students. Compare section 14 with Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

A letter from the legal services attorney who worked in this code is included to show the problems lawyers and students face when attempting to achieve code reforms.

54e

State Laws or Policy Statements

Where a local school board is not receptive to issuing a statement recognizing the full range of students' substantive and procedural rights, and where it seems undesirable to force the issue in the courts, it may be useful to seek a policy statement from state officials. They, in turn, can use whatever legal or political powers they have to seek adoption of the statement at the local level. One statute and three examples of policy statements from state education departments are included here. In all of these examples, there has been no attempt to specify offenses which are appropriate for disciplinary action.

The Washington State superintendent was most precise in specifying a rationale that should be followed when a local school board decides to promulgate regulations: " . . . a rule is reasonable if it utilizes a reasonable means of accomplishing some legitimate school purpose." He also cautioned that constitutionally protected activity may not be infringed upon "unless the school authorities could show that the failure to regulate would create a material and substantial disruption of school work and discipline." The Washington State Board also recommends inclusion of teachers, parents and students in the rule-making process. Their statement also outlines the essential elements of procedural due process (except for right to counsel). (pp. 147-152)

The Rhode Island policy statement is limited to specifying certain first amendment rights of students, recognizing a student's right to procedural due process, without itemizing its individual elements, and creating rights to participate in the decision-making process. (pp. 153-156)

The Massachusetts statement, which was drafted with student participation (see attached press clippings p. 163) is more a guide for local code drafters than a code itself. However, it does rephrase the common law rule of ultra vires -- a board's power does not extend beyond the school setting (section 8) and it partially restates first amendment rights (section 7). The recognition of existing rights doesn't always extend to the full range of rights protected by the Constitution. Compare section 7 with Tinker v. Des Moines Independent Community School District, supra. It also suggests creation of new rights, including the right to student government (section 4), the right to shape certain student activities (section 6), the right to have access to one's school record and have everything in the record except academic information treated as confidential (section 11). (pp. 157-164)

The New York law simply outlines requirements for procedural due process. Case law probably provides for the same protection in the absense of statute. (pp. 165-166)

Of the four, the Washington statement perhaps is the best model for a state-wide guide. It does not attempt to provide specific statements of students rights, but refers generally to students' first and fourteenth amendments rights. Overly specific statements of rights might tempt a local board to distinguish novel cases and subject them to disciplinary treatment. Reference to additional rights (eg. the ninth amendment, or rights contained in the state constitution) might also be advisable.

Models -- Revisions of Existing Codes

1. Oakland Lawyers' Committee (p. 169)

There are several ways students and their lawyers can seek adoption of codes which are more fair to students. In Boston, for example, the district's procedures were challenged in court: lawyers for plaintiffs drafted new procedures which were incorporated into the Boston code by court order (see above). In New York and Philadelphia, students drafted an entirely new code and negotiated with the Board for its adoption. In Oakland, the Oakland Lawyers' Committee chose to work within the existing state and local framework and seek only revisions of lengthy policies which had been drafted by school officials. The end product was a statement lacking in conciseness and simplicity, sometimes irrelevant, and with provisions of questionable constitutionality. Starting from scratch would have produced a better code, but, on the other hand, it may not have been as likely to receive Board of Education approval. According to Russell Bruno, an active member of the Committee "starting from scratch would have produced a better code, but, given the preexisting investment by the Superintendent and his staff in the code originally presented to the Board, this was not a realistic alternative."

Even the conciliatory language recommended by the Committee has had a hard time obtaining Board approval. Mr. Bruno writes (letter of April 2, 1971):

> The Oakland Lawyers' Committee has inquired from time to time during the past year or so about the long delay. The answer of the Superintendent is only that they "haven't forgotten it" and "it won't be much longer." At this writing, however, there is no indication that we are any closer to seeing the adoption of the "final"code than we were a year ago. Meanwhile, no one really knows what the Districts' "existing" policies and procedures are.
>
> Despite the frustration inherent in our approach, I nevertheless believe that, whatever is accomplished, it will be much more than would have been gained by beginning with a law suit of some kind. I believe it is best first to establish the limits of flexibility through negotiation and then, if necessary, pursue unresolved differences through litigation. On the other hand, if negotiation either appears totally fruitless or is utilized by the School District merely for the purpose of delay, an action should be filed.

The cover memorandum by the lawyer's committee is included in the packet to provide background information. Much of the draft of the Lawyer's Committee has been excluded because it would be of little applicability outside Oakland. As the draft was an adaptation of the Board's own language, some of the omitted sections read more like a guidebook than code, requiring certain educational methods and programs, adequate staffing, and the like. Much of the draft is merely sermonizing: "Parents have the responsibility to develop in their children, respect, courtesy, obedience, consideration for the rights of others, and the desire to learn." or "Each staff member should provide the best possible instruction for his students..." Violations of any of these provisions would be regrettable, but they do not seem appropriate for disciplinary proceedings by school officials. The procedural requirements have also been deleted, since adequate guides may be found in several other codes which are reproduced in this packet.

The provision reproduced here relates to corporal punishment, an item which does not appear in the other codes in this packet. Since noncorporal punishments are available to serve the same purpose as corporal punishment, they seem preferable. (See the final section in the Center's Student Rights Packet.) However, if a school board seems determined to allow corporal punishment, then the Lawyers' Committee draft would be useful as a guide to a relatively reasonable way of stating the policy. The official redraft by the Oakland School Board of this same provision has also been included. The Lawyers' Committee draft would have made corporal punishment contingent on the filing of written permission from a parent. The district's version would allow it unless the parent files a written objection.

Also included is a District "Tentative Administrative Bulletin" relating to police in the schools (pp. 169-181). The Lawyer's Committee has severely criticized these bulletins for reasons stated in the memorandum on this subject. From Mr. Bruno, a member of the Lawyer's Committee, to the district superintendent. (pp. 182-206) The value of a board regulation authorizing police presence in the schools is doubtful. The police have authority, wihout the district's statement, to enter a school and arrest students who are violating criminal laws. School officials ought to be able to deal with those students activities which may be disagreeable but are not criminal.

Finally, as Mr. Bruno points out, the board has no authority to use school premises for police purposes which are unrelated to the school's educational purposes. The unnecessary presence of police in the school can only serve to create tensions between students and faculty and loss of respect for the faculty, and will inevitably distract students from the main business of learning.

The Oakland project succeeded in making an unfair code somewhat more reasonable. Lawyers might also consider the alternatives of court action when faced with an unfair code, providing that students are willing to undergo the hazards of court action. If a law suit is pending, it might weaken the case to first negotiate for more favorable language in a challenged code.

Model Codes

1. Youth Law Center (p. 207)

Unlike the Oakland Lawyers' Committee, the Youth Law Center in San Francisco did not remain within the framework of existing Board regulations. Initially they attempted to follow local regulations, but after a successful law suit declaring state and local rules on distribution of literature unconstitutional (O'Reilly v. San Francisco Board of Education, N.D. Calif, no. 51427(1970), they completely overhauled the code. Of course, they continued to work within the confines of existing state law.

The Youth Law Center's code first lists students' rights beginning with those which are not constitutionally guarantied. Constitutional rights are also included in detail (items 12-14). When itemizing rights in detail like this it might be preferable, if possible, to include a clause which indicates that the rights "include but are not limited to" those listed. The omission of such a clause does not prejudice students, however, and this should not be grounds for an impasse when negotiating with school boards. The Code spells out disciplinary actions — 1) teacher suspensions, which are limited to one class period; 2) administrative suspensions, which are limited to eight specific reasons, all involving very serious offenses, and which specifically exclude suspension for truancy or for use of alcoholic beverages or drugs; and 3) expulsions, which are limited to situations where a student is physically dangerous. It prohibits corporal punishment. Procedural safeguards are not required prior to action. A student may appeal any action, however. The code creates school Mediation Committees, composed of teachers, parents and students to hear cases where a student feels he has been wrongfully disciplined. The Committee will attempt to achieve a resolution satisfactory to all parties. Students have a right to receive a notice of charges in writing, to present evidence, question witnesses, and name a representative, (who presumably could be an attorney). A hearing must be held within eight days of a suspension (a conference must be held within three days and if the student is not reinstated, the hearing must be held within five days.) Cases may be appealed to a City-wide Mediation Committee.

The code will be presented to the San Francisco Board on May 20, 1971.

2. High School Disciplinary Procedure Statute, model prepared by the National Juvenile Law Center, St. Louis University (p.229).

This document is a model for enactment of a state law governing student disciplinary procedures. It limits suspensions, transfers, and expulsions to situations involving 1) assault or battery on the school grounds, 2) continued disobedience of school officials resulting in disruption of the school, and 3) possession or sale of narcotics or hallucinogenics on school premises. It allows temporary suspensions (of less than one day) by principals if the presence of a student would be "substantially disruptive of the physical or educational interests of the other students." It then carefully details the procedure which must be followed before any student can be suspended, transferred or expelled. It includes provision for notice, right to counsel, right to rebut evidence, and the like. The code also creates a hearing board which would include student and parent representation, but a student may elect to have a hearing before school officials only. Additional information on this model can be found in the article by Ralph Faust (p. 247)

3. Michigan Legal Services Office: Draft of a Code prepared for the Detroit Public Schools (p.249)

This code does not contain any broad acknowledgment of students' existing constitutional rights, but it does specify certain rights relating to publication and distribution of materials. The code also spells out the right to form student organizations, to determine one's own dress (but not grooming), and to be accorded due process prior to suspension.

There is no effort to specify what activities would warrant suspension, but this is dealt with by state law (Mich. Stat. Ann. § 15.3613). The code leaves it to the school officials to publish "rules and regulations" at the beginning of the school year (section 7). Presumably an infraction of these rules would be punishable by something less than suspension. Compare this language with the model code (section 5) prepared by the Juvenile Law Center which specifically limits serious punishment to three serious offenses.

4. Robert E. Phay and Jasper L. Cummings, Jr., Student Suspensions and Expulsions, Institute of Government, University of North Carolina (p. 261)

The excerpts from this pamphlet are intended to show the scope of the work. Much detail and explanation has been deleted from this model, and readers desiring the full pamphlet should order it. The model code drafted by the authors is divided into three parts: Part one sets forth eight rules proscribing certain types of student misconduct; part two prescribes the procedure for handling rule violations; and part three contains suspension and expulsion provisions for dangerous students.

5. Student Mobilization Committee, High School Bill of Rights (p.269)

This document outlines students rights to free speech, political activity, and due process. It guarantees student government and participation in curriculum decisions and teacher evaluation. There is some language which betrays the SMC's specific anti-war views; and it is doubtful that a school board would be willing to adopt the code, even if they would be willing to recognize the students' right to dissent in more general terms.

6. The University of Oregon (p.273)

The University of Oregon code was developed by its law school, and in many ways it can be considered a "model code" although actually adopted. See Linde, Berkeley Viewed from Eugene, 54 Cal. L. Rev. 40 (1966). One section has been included here to provide an example of procedures for forming student courts and including students in the disciplinary process. This is not prevalent at the high school level but the concept is incorporated in the Juvenile Law Center Code (see above).

IV. Examples of Official Codes

A. City-Wide Codes

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City-wide Codes

1. Seattle

STATEMENT of RIGHTS and RESPONSIBILITIES

SEATTLE PUBLIC SCHOOLS

The SEATTLE SCHOOL DISTRICT
recognizes the following:
That the primary intent of society
in establishing the public schools
is to provide
an opportunity for learning.
That the students have full rights
of citizenship as delineated
in the United States Constitution
and its amendments.
That citizenship rights
must not be abridged, obstructed,
or in other ways altered
except in accordance
with due process of law.
That education
is one of these citizenship rights.

(August 12, 1970)

SEATTLE SCHOOL BOARD

Richard J. Alexander
Dr. Edward P. Palmason
Alfred E. Cowles
Mrs. Forrest S. Smith
Philip B. Swain
Dr. Robert A. Tidwell
David E. Wagoner

SUPERINTENDENT

Forbes Bottomly

Seattle continued...

The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people.

(John Stuart Mill, ON LIBERTY)

Preamble

A primary responsibility of the Seattle School District and its professional staff shall be the development of an understanding and appreciation of our representative form of government, the rights and responsibilities of the individual and the legal processes whereby necessary changes are brought about.

The school is a community and the rules and regulations of a school are the laws of that community. All those enjoying the rights of citizenship in the school community must also accept the responsibilities of citizenship. A basic responsibility of those who enjoy the rights of citizenship is to respect the laws of the community.

Recent court decisions have indicated clearly that young people in the United States have the right to receive a free public education, and the deprivation of that right may occur only for just cause and in accordance with due process of law.

The courts have also stated that students have the rights of citizenship as delineated in the United States Constitution and its amendments; and these rights may not be abridged, obstructed or in other ways altered except in accordance with due process of law. The First and Fourteenth Amendments to the Constitution of the United States prohibit states from unduly infringing upon the rights of speech and expression. In the school setting this restriction on state action limits the manner and extent to which schools may limit the speech and expression of students. In order to effectively regulate First Amendment rights, school authorities must show that the failure to regulate would create a material and substantial disruption of school work and discipline.

Administrators and teachers also have rights and duties. The teacher is required by law to maintain a suitable environment for learning and administrators have the responsibility for maintaining and facilitating the educational program.

The principal is authorized by statute to suspend students for cause. The teacher has the authority to suspend students from a class for cause. The following rules, regulations and due process procedures statement are designed to protect all members of the educational community in the exercise of their rights and duties.

Nothing in this statement of student rights shall be held to limit the due process rights of educators or non-certificated school employees nor their use of the District grievance procedure.

Rights, Responsibilities, and Limitations

1. CRIMINAL ACTS DEFINED

The following activities are among those defined as **criminal** under the laws of the State of Washington and the City of Seattle.

ARSON—The intentional setting of fire.

ASSAULT—Physical threats or violence to persons.

BURGLARY—Stealing of school or personal property.

EXPLOSIVES (Illegally used)—Explosives are not permitted on school property or at school-sponsored events.

EXTORTION, BLACKMAIL OR COERCION — Obtaining money or property by violence or threat of violence or forcing someone to do something against his will by force or threat of force.

FIREARMS (Illegally used)—Firearms are prohibited on school property or at school-sponsored events.

LARCENY—Theft.

MALICIOUS MISCHIEF—Property damage.

ROBBERY—Stealing from an individual by force or threat of force.

SALE, USE OR POSSESSION OF ALCOHOLIC BEVERAGES OR OF ILLEGAL DRUGS.*

TRESPASS—Being present in an unauthorized place or refusing to leave when ordered to do so.

UNLAWFUL INTERFERENCE WITH SCHOOL AUTHORITIES —Interfering with administrators or teachers by force or violence.

UNLAWFUL INTIMIDATION OF SCHOOL AUTHORITIES—Interfering with administrators or teachers by intimidation with threat of force or violence.

***The school official in charge will immediately remove from contact with other students anyone under the influence of alcohol or drugs and thereupon shall contact the parent or legal guardian.**

Seattle continued...

The commission of or participation in such activities in school buildings, on school property, or at school-sponsored events is prohibited. Disciplinary action will be taken by the school regardless of whether or not criminal charges result.

2. SMOKING—Smoking by students is not permitted on school property.

3. DRESS AND APPEARANCE—Dress and appearance must not present health or safety problems or cause disruption.

4. ATTENDANCE—Daily attendance of all who are enrolled in the Seattle Public Schools is required in accordance with state law and School Board rules. Students will attend regularly scheduled classes unless officially excused.

5. DISRUPTIVE CONDUCT—Conduct which materially and substantially interferes with the educational process is prohibited.

6. COOPERATION WITH SCHOOL PERSONNEL — Students must obey the lawful instructions of school district personnel.

7. REFUSAL TO IDENTIFY SELF—All persons must, upon request, identify themselves to proper school authorities in the school building, on school grounds or at school-sponsored events.

8. OFF-CAMPUS EVENTS—Students at school-sponsored, off-campus events shall be governed by school district rules and regulations and are subject to the authority of school district officials. Failure to obey the rules and regulations and/or failure to obey the lawful instructions of school district officials shall result in loss of eligibility to attend school-sponsored, off-campus events.

9. FREEDOM OF SPEECH AND ASSEMBLY

a. Students are entitled to verbally express their personal opinions. Such verbal opinions shall not interfere with the freedom of others to express themselves. The use of obscenities or personal attacks are prohibited.

b. All student meetings in school buildings or on school grounds may function only as a part of the formal educational process or as authorized by the principal.

c. Students have the freedom to assemble peacefully. There is an appropriate time and place for the expression of opinions and beliefs. Conducting demonstrations which interfere with the operation of the school or classroom is inappropriate and prohibited.

10. FREEDOM TO PUBLISH

a. Students are entitled to express in writing their personal opinions. The distribution of such material may not interfere with or disrupt the educational process. Such written expressions must be signed by the authors.

b. Students who edit, publish or distribute handwritten, printed or duplicated matter among their fellow students within the schools must assume responsibility for the content of such publications.

c. Libel, obscenity, and personal attacks are prohibited in all publications.

d. Unauthorized commercial solicitation will not be allowed on school property at any time. An exception to this rule will be the sale of non-school-sponsored student newspapers published by students of the school district at times and in places as designated by the school authorities.

e. The distribution by students in school buildings or on school grounds of unlawful or political material whose content reflects the special interests of a political candidate or political organization is prohibited.

11. SEARCH AND SEIZURE

The following rules shall apply to the search of school property assigned to a specific student (locker, desk, etc.) and the seizure of items in his possession:

a. There should be reasonable cause for school authorities to believe that the possession constitutes a crime or rule violation.

b. General searches of school property may be conducted at any time.

c. Search of an area assigned to a student should be for a specific item and be in his presence.

d. Illegal items (firearms, weapons) or other possessions reasonably determined to be a threat to the safety or security of others may be seized by school authorities.

e. Items which are used to disrupt or interfere with the educational process may be temporarily removed from student possession.

Any section of this document, or portion thereof, found by adjudication to be contrary to law or constitutional right shall be stricken without effect to the remainder.

Seattle continued...

Due Process

Procedural Rules and Regulations for the School Community

The constitutional rights of individuals assure the protection of due process of law; therefore, this system of constitutionally and legally sound procedures is developed with regard to the administration of discipline in the Seattle Public Schools:

1. The hallmark of the exercise of disciplinary authority shall be **fairness.**
2. Every effort shall be made by administrators and faculty members to resolve problems through effective utilization of school district resources in cooperation with the student and his parent or guardian.
3. A student must be given an opportunity for a hearing if he or his parent or guardian indicate the desire for one. A hearing shall be held to allow the student and his parent or guardian to contest the facts which may lead to disciplinary action, or to contest the appropriateness of the sanction imposed by a disciplinary authority, or if the student and his parent or guardian allege prejudice or unfairness on the part of the school district official responsible for the discipline.
4. The hearing authority may request the student and parent or guardian to attempt conciliation first, but if the student and parent or guardian decline this request the hearing authority shall schedule the hearing as soon as possible.
5. The following procedural guidelines will govern the hearing:
    a. Written notice of charges against a student shall be supplied to the student and his parent or guardian.
    b. Parent or guardian shall be present at the hearing.
    c. The student, parent or guardian may be represented by legal counsel.
    d. The student shall be given an opportunity to give his version of the facts and their implications. He should be allowed to offer the testimony of other witnesses and other evidence.
    e. The student shall be allowed to observe all evidence offered against him. In addition he shall be allowed to question any witness.
    f. The hearing shall be conducted by an impartial hearing authority who shall make his determination solely upon the evidence presented at the hearing.
    g. A record shall be kept of the hearing.
    h. The hearing authority shall state within a reasonable time after the hearing his findings as to whether or not the student charged is guilty of the conduct charged and his decision, if any, as to disciplinary action.
    i. The findings of the hearing authority shall be reduced to writing and sent to the student and his parent or guardian.
    j. The student and his parent or guardian shall be made aware of their right to appeal the decision of the hearing authority to the appropriate appellate authority.

Suspensions

SUSPENSION 1: A student is suspended from a class or classes but not from the building. Technically speaking this is not a suspension but a debarment, that is, the student is being barred from classroom attendance. This action by a teacher is subject to review by the principal which will include consultation with the teacher. Formal due process procedures are not appropriate in this situation.

SUSPENSION 2: A student is suspended from the building for the remainder of the school day.

SUSPENSION 3: A student is suspended from the building pending a conference with the parents or guardian.

SUSPENSION 4: A student is suspended for the remainder of the semester or for a given period of time.

SUSPENSION 5: A student is suspended from attendance at or participation in a school district sponsored activity.

2. Philadelphia

SCHOOL DISTRICT OF PHILADELPHIA

BILL OF RIGHTS AND RESPONSIBILITIES FOR HIGH SCHOOL STUDENTS

Adopted by
Board of Education
December 21, 1970

PREAMBLE

WHEREAS the Philadelphia public school system is an academic community consisting of all students, teachers, administrators, parents, and community at-large; and

WHEREAS such a community will serve its functions best if all its members are provided reasonable means of exercising and protecting their constitutional rights;

THEREFORE BE IT RESOLVED that a student bill of rights and responsibilities, and procedure for student grievances are hereby established in order to achieve a greater cooperative effort in shaping the structure and direction of the Philadelphia public school system. A corresponding responsibility of students is to respect the rights and obligations of others in the community and to actively engage in the establishment of a climate for learning within the schools.

No part of the enacted document shall abridge the school code of the State of Pennsylvania and contracts established within the Philadelphia public school system and the rights of parents with respect to their children during school hours or otherwise.

The senior and technical high school students of The School District of Philadelphia shall have the following rights as more fully defined in the commentary of the attached backup materials which is to be considered an integral part of this Bill."

BILL OF RIGHTS AND RESPONSIBILITIES FOR HIGH SCHOOL STUDENTS

1. The rights and limits of students respecting freedom of speech, press, and assembly shall be in accord with the first amendment of the United States Constitution.

2. In each high school there shall be established an elective and truly representative student directed government with offices open to all students. All students shall be allowed to vote. This government shall be elected annually on the basis prescribed by the constitution of each individual school.

3. At the discretion of the student government in each school, there may be ombudsmen, elected annually by students, who shall be trained to offer counsel as to students' rights.

4. Students shall have the right to counsel and due process procedures in the matters of suspension, transfer and expulsion.

5. Students shall have the right to participate in decisions affecting the curriculum through student representatives duly designated by the Student Government.

6. Students shall have the right to participate in the establishment of regulations regarding discipline through student representatives duly designated by the Student Government.

7. **Academic performance shall be the only criterion for academic grades.**

8. **Students shall not be subjected to unreasonable or excessive punishment.**

9. **Students shall not be subjected to corporal punishment.**

10. **In light of the creation of these orderly procedures for dealing with student concer no student shall disrupt the education process within a school.**

11. **Every member of the school community, including student, parents, the school staff, has the responsibility to promote regular attendance at school, orderly conduct and behavior, freedom from fear of insult or injury, and maximum opportunities for learning on the part of each student.**

12. **No rule or regulation shall be established which diminishes the right of any studen as set forth in Student Bill of Rights and Responsibilities.**

TO: Members of the Board of Education

FROM: Mark R. Shedd

RE: Student Bill of Rights and Responsibilities

I. Freedom of Expression

The primary liberties in a student's life have to do with the process of inquiry and learning, of acquiring and imparting knowledge, and of exchanging ideas. This process requires that students have the right to express opinions, to take stands, and to support causes, publicly or privately. There should be no interference in the school with these liberties, or with the student's access to or expression of controversial points of view, except as provided below.

A. Bulletin Boards - School authorities may restrict the use of certain bulletin boards to school announcements. Ample bulletin board space shall be provided for the use of students and student organizations, including a reasonable area for notices relating to out-of-school activities or matters of general interest to students. There shall be no prior censorship or requirement of approval of the contents or wording of notices or other communications, but the following general limitations on posting may be applied:

1. School authorities shall prohibit material which is obscene according to current legal definitions; which is libelous; or which inflames or incites students so as to create a clear and present danger of the commission of unlawful acts on or of physical disruption to the orderly operation of the school.
2. Identification on any posted notice shall be required of the student or student group including the name of at least one person of the group issuing same.

3. The school shall require that notices or other communications be officially dated before posting and that such material be removed after a prescribed reasonable time to assure full access to the bulletin boards.

B. Distribution of Printed Material and Circulation of Petitions - Students shall be free to distribute handbills, leaflets and other printed material and to collect signatures on petitions concerning either school or out-of-school issues, whether such materials are produced within or outside the school. There shall be no prior censorship or requirement of approval of the contents or wording of such material, but the following general limitations may be applied:

1. The time of such activity shall be limited to periods before school begins, after dismissal and during lunch time, if such limitation is necessary to prevent interference with the school program.
2. The place of such activity shall be reasonably restricted to permit the normal flow of traffic within the school and at exterior doors.
3. The manner of conducting such activity shall be restricted to prevent undue levels of noise, or to prevent the use of coercion in obtaining signatures on petitions. The danger of littering is not a sufficient ground for limiting the right of students to distribute printed material.
4. The school shall require that all printed matter and petitions distributed or circulated on school property bear the name of the sponsoring organization and the name of one individual of such organization.
5. The school shall prohibit the distribution of material within the restricted categories of paragraph A1 above.

In the case of petitions presented by students to the school authorities, students shall have the right to have their petitions considered and to receive an authoritative reply thereto.

C. Buttons and Badges - The wearing of buttons, badges, or armbands bearing slogans or saying shall be permitted as another form of expression, unless the message thereof falls within the restricted categories of paragraph A1 above. No teacher or administrator shall attempt to interfere with this practice on the ground that the message may be unpopular with students or faculty.

In imposing limitations on student expression for any reason under any of the foregoing provisions, the school must ensure that its rules are applied on a non-discriminatory basis and in a manner designed to assure maximum freedom of expression to the students. The school shall particularly avoid any action placing restraints on ideas prior to their expression. Any student or student groups deprived of freedom of expression under any of these provisions shall have the right to request a hearing to determine whether such deprivation is justified under these rules. Such a hearing must be held as soon as possible after request before an impartial body, including representatives of the faculty and student body. The hearing shall provide for a full and fair opportunity for both sides to present evidence and argument as to the propriety of the application of the regulation in question.

II. Student Government

A. The elected representatives of the students shall work with faculty, administration and the student body in identifying those areas of appropriate student responsibility in the life of the school.

B. The organization, operation and scope of the student government should be specified in a written constitution formulated by the students.

C. The student government shall have a faculty sponsor selected by the members of the student government.

D. Clubs and other Student Organizations must be chartered according to provisions established in the constitution of the student government.

E. Each organization or club shall have a set of by-laws approved by the student government. These by-laws:

Shall not be in conflict with the constitution of the student government.

Shall provide for a faculty sponsor.

Shall provide for a roster of members on file with the student government.

Shall set forth membership qualifications which do not exclude students based on race, color, creed or political belief.

The student government has the authority to revoke the charter of any club that operates in violation of its by-laws.

II. School Communications

The administration, faculty and student government shall jointly establish regulations as to the manner, time and place for using communication facilities of the school. Based upon these established policies, access shall be made available to student groups for announcements and statements to the student body through the public address system, bulletin boards, and personal contact.

IV. Forums

Open forums are encouraged to provide students with the opportunity to speak or hear others speak on topics of general interest. Classrooms, school assemblies and extracurricular organization meetings are some appropriate settings for the oral exchange of ideas. Guidelines for the use of such forums should be formulated by the administration, faculty and student government and made available to students and teachers. Guidelines shall restrict forums from the following: violation of attendance regulations, obscenity, inflammatory language, inciting students to riot, clearly endangering the health or safety of members of the school community, or clearly disrupting the educational process.

Ombudsmen

In order to assure that each student is informed concerning his rights and responsibilities as provided in this Bill at the discretion of the student government in each high school, there may be established in each high school the position of ombudsman. Ombudsmen shall be elected by or composed of members of the student government or elected by the student body at large. The number of ombudsmen needed in any school shall be determined by the student government in consultation with the principal. Ombudsmen shall serve voluntarily and without compensation and may be qualified students of that school, parents, teachers, counselors or responsible qualified citizens of the community-at-large. It shall be the responsibility of the Superintendent of Schools to provide the necessary training of ombudsmen prior to their taking office and will establish a procedure for declaring an individual unqualified or unfit to serve as an ombudsman. In no case shall an ombudsman supersede the right or obligation of a parent to counsel, protect or represent his/her son or daughter.

Grievance Procedure for Senior High School Students

Section I -- Definitions

A grievance is a complaint by a student in the School District of Philadelphia that there has been to him a personal loss, injury, or a violation, misinterpretation or inequitable application of an established policy governing students.

It is a basic policy of the student grievance procedure to encourage students to discuss their grievance informally with the person against whom the grievance is directed, prior to the grievance procedure. The student may seek advice or services of the ombudsman in attempting to solve the grievance informally. If the student so desires, the ombudsman shall accompany the student in going to the staff member at this informal stage.

It is expected that the great majority of cases will be resolved in this fashion.

Where this technique is proved to be inadequate or the student is unable to do this, he may invoke the grievance procedure.

Section 2 -- Procedure for Adjustment of grievances

1. The grievance shall be submitted in writing to the principal. However, if the grievance involves the principal directly or is directed against a policy that the principal has decided upon, the student may decide to skip step 1 and proceed immediately to the District level.

   Within 5 school days, the principal shall call a meeting of the student, who may be accompanied by ombudsman or parent, the staff member and the PFT representative, if the staff member so chooses, to discuss the grievance. The principal shall make every effort to resolve the matter equitably and as quickly as possible, but within a period not to exceed 3 days. The principal shall communicate his decision in writing to the student, parent, and the staff member.

Failure on the part of the principal either to call a meeting or to render a decision in writing within the designated time, shall constitute the basis for an automatic appeal to the next level.

2. If the grievance is not resolved to the satisfaction of the student, he may appeal the principal's decision to the district superintendent in writing within 3 school days.

   The district superintendent or his designee shall meet with the student who may be accompanied by the parent or ombudsman, the staff member and his representative, in order to resolve the matter equitably and as quickly as possible, but within a period not to exceed 5 school days. The district superintendent shall communicate his decision in writing to the student, the parent, the staff member, and the principal.

3. If the grievance is not resolved to the satisfaction of the student, he may appeal the district superintendent's decision to the Superintendent of Schools in writing within 3 school days.

   The Superintendent of Schools or his designee shall meet with the student, parent or the ombudsman, the staff member and his representative, within 10 school days in attempt to resolve the matter.

   The decision of the Superintendent of Schools shall be communicated in writing to all parties previously involved within 5 school days.

The decision of the Superintendent of Schools shall be final and binding upon all parties subject only to judicial review.

THE GRIEVANCE PROCEDURE

The grievance procedure in no way abrogates the rights of students to seek relief in the Courts.

Every effort should be made by the student and teacher, principal, parent, or other, to resolve the grievance informally with or without the assistance of the student ombudsmen.

So each step in the grievance procedure teachers, principal, parent, and others against whom the grievance is lodged, may be represented by an official of their organization (PFT, Principals' Association, Legal Counsel, etc.)

Right to Counsel and Due Process

WHEREAS, the Board of Education of The School District of Philadelphia wishes to assure every aggrieved student a fair and equitable hearing in situations involving suspensions in excess of five school days and expulsions from the school system;

WHEREAS, in order to implement this policy, rules and regulations governing suspensions in excess of five school days and expulsions from the school system should be promulgated, now be it

RESOLVED, The following rules and regulations shall apply to all cases of suspensions in excess of five school days and expulsions from the school system:

1. A member of the Board, sitting as a committee of one, together with appropriated staff, shall hear all cases involving suspensions in excess of five school days and expulsions from the school system. This member shall conduct an informal hearing and make a recommendation to the Board.

2. The hearing shall be held promptly.

3. Proper notice of the hearing shall be served on the parent or guardian of the student at least five days before the date of the hearing. In addition to giving the time and place of the hearing, the notice shall briefly set forth the alleged act or

acts of which the student is charged.

4. The notice should also advise the student and his parent or guardian of their right to present witnesses and be represented at the hearing by legal counsel. In cases where the student has legal representation, a member of the legal staff of the School District shall represent the school administration.

5. The hearing shall be tape-recorded, from which a summary of the testimony of each witness shall be made on request. Tapes shall be preserved in accordance with practice of the Board.

6. No one except counsel, the parties and their witnesses shall be permitted to be present at the hearing.

7. The witnesses shall give their testimony under oath, and the right of cross examination shall be permitted. The admission of evidence shall be a matter within the discretion of the Board Member.

8. The failure of a student and/or his parent or guardian to attend the hearing, after proper notice, shall constitute a waiver of the right to a hearing.

9. The findings of fact and the recommendation of the Board Member to the Board shall be in writing. This recommendation shall bo acted upon at the next regular meeting of the Board, and the student and his parent or guardian shall be advised, immediately thereafter, of the Board's decision. The Board shall protect the student's and his parent's or guardian's right to privacy.

10. If the Board expels the student he shall be referred to the school counselor for referral to an appropraite agency for further counseling and guidance, or for assistance in obtaining employment, or continuing his education; and be it

FURTHER RESOLVED, That the Superintendent of Schools, shall appoint a committee to revise Administrative Bulletin No. 13, entitled "Suspension and Expulsion of Students" to conform with this Resolution.

Participation of Students in Decisions Affecting the Curriculum

Students shall have a voice in the formulation of school policies and decisions which affect their education and lives as students through student representatives duly designated by student government. Through such participation, students can be a powerful resource for the improvement of the school, the educational system and the community.

Students also have responsibilities. These responsbilities include regular school attendance, conscientious effort in classroom work, and conformance to school rules and regulations. Most of all they share with the administration and faculty the responsibility of developing a climate in the school that is conducive to wholesome learning and living.

School policies, rules and regulations affecting pupils should be reviewed periodically by students, faculty and administration at each school

Freedom from Unreasonable or Excessive Punishment

1. Students shall not be subjected to unreasonable or excessive punishment. The following practices offer guidance to teachers for reasonable forms of disciplinary action: There may be:

   (a) Expressions of disapproval first in private and later, if necessary, in the presence of group

   (b) Temporary isolation unde supervision

   (c) Detention for specific purpose which is clearly stated and achieved during the detention

   (d) Withdrawal of specified privileges for a stated time, so long as the withdrawal does not result in the injury of the student

Note: Referral to the principal, or other disciplinary officer within the school, designated by him, is in order after the teacher has exhaust all his own possibilities for bringing about an adjustment

2. There may not be:
    (a) Sarcastic remarks
    (b) Personal affront and indignity
    (c) School tasks imposed for punitive purposes
    (d) Frequent detentions without specific purpose
    (e) Forced apologies
    (f) Exclusion from the room without supervision
    (g) Sending students to a lower grade

Student rights also entail responsibilities. Self-respect and respect for others is one of the major goals of this document. No student has the right to interfere with the education of his fellow students. It is the responsibility of ca student to respect the rights of all who are involved in the educational process. In no way does this "Student Bill of Rights and Responsibilites" diminish the legal authority of the school officials and of the Board of Education to deal with disrupti students. This resolution recognizes the student's responsibility for his conduct and at the same time extends the range of his responsbility. Greater understandi by all engaged in the educational process should result and the outcome should be effective citizenship in our society.

3. **New York City** (student memo)

March 29, 1970

A STUDENT VOICE ON POLICY

by Donald Reeves, President NYC G.O.

SHORT HISTORY ON BILL

After the violence and racial tension that rocked the City's high schools in the spring of 1969, the Board of Education formulated a so-called Student Bill of Rights. The proposal was merely a restatement of existing rights already upheld by laws, rules, regulations and courts, rather than a policy to implement constitutional rights. While superficially granting students their constitutionally protected rights of free speech, assembly, the limitation "so long as they do not interfere with the regular school program," leaves a vacuum for administrative interpretation. No public official may exercise authority that is inconsistent with the fundamental safeguards. The educational bureaucracy has taken upon itself the granting of rights that are not even within its jurisdiction. High school students have been taught to obey the law and courts. Despite a statement issued two years ago by the Commissioner of Education saying high school principals did not have the right to regulate dress, and despite several dozen court cases that have upheld that decision, principals still continued to suspend students for wearing dungarees or slacks. The Board of Education's Bill continues in that tradition. I am merely pointing out the necessity of establishing grievance machinery for students, for there is no check on the principals. While enumerating the rights and responsibilities, the Board of Education's document failed to provide channels through which students may achieve reforms within the system. Such vague statements as: ". . . participate in making decisions . . . to share in formation of school policy . . . and insure implementation . . ." are evidence of the Board's lack of sincerity, for there are no outlined powers to assure implementation of anything.

Labor [illegible]

Student Government (G.O.) was set up by the Board of Education to let students learn about governing without the exercise of real power. Hence they have become widely scorned by the majority of high school students. In fact the majority of high school students are not even G.O. members. And yet the Board of Education will only recognize the G.O.'s as "representative" if the policy of the G.O.'s conform with the Board of Education's. Currently, principals are free to exercise discriminatory arbitrary power. At Music and Art an article that I submitted for publication in the school year book, which complied with the Board of Education's standards of responsible journalism and was accepted by the year book staff, was later subjected to censorship and rejected by the principal on the basis that "there is no other counter opinion as strong as his in the book." At Cardozo High School, black students presented demands to the administration. In order to thwart the issue and gain community support the principal publicized the situation as a racial conflict rather than an issue of students vs. the administration. At George Washington High School, in order to give students a legitimate outlet to air their compliants, the community volunteered to make up for the inadequacy of the guidance department by setting up a students' complaints table. The Board reneged on an agreement permitting parents to operate the grievance table after teachers boycotted classes. I have pointed out, briefly, only a few specific problems. I have said nothing about the police state at Franklin K. Lane, etc. However, there are numerous problems that are facing students--overcrowding, schools too big to be human, irrelevant curricula, improper suspensions, harassment from administrators for students organizing peace demonstrations and an overall alienation from the affairs of the decision making in the educational process. Out of this frustration grew a negotiable Student Bill of Rights (formulated by three high school seniors and ratified by the G.O. Council). This Student Bill outlined specific powers and responsibilities. Many student groups rallied behind the Bill because their interests were represented in the document. Subsequently, a High School Students Rights Coalition was formed. Admittedly, the Bill is a mixture of constructively legitimate with the unrealistic egalitarian demand for equal powers to all, regardless of qualifications. However, the alarm, opposition and negative response by school officials is wrong. The offer of a negotiable proposal was "deplored" by the Principals' Association. A Commissioner called the proposal ridiculous. All of these statements are attempts to thwart the real issue in order to gain support from the community.

The essential difference between the bill drawn up by the Student Coalition and the proposal submitted by Dr. Lachman is a matter of who is to have the principal decision-making role. Lachman prefers to leave the function where it presently lies--in the hands of the Board. The Student Coalition has called for a fundamental change here. We see the need to give the decision-making role to the students, faculty, parents and administration of each school. This concept is a direct derivative of our conception of the school. We see a school as a community, and consequently feel that it is essential to make it a democratic community. In a democracy, decisions are made by the community on a representative basis. Thus, we feel that the decision-making role should be in the hands of the students, faculty, parents and the administration--the groups that represent the community--rather than solely in the hands of the Board of Education, which represents only the administration--the smallest interest group. The central issue here is the autocracy of the Board of Education vested in the principal and when the autocracy is threatened vested in the Police Department.

It is for the recognition of this fundamental concept that New York's high school students have organized themselves in the high schools; and it is for recognition of this fundamental concept that we will be attempting to negotiate with the Board of Education this spring.

3. New York City (draft code prepared by students)

THE RIGHTS AND RESPONSIBILITIES OF
THE SENIOR HIGH SCHOOL STUDENT

as proposed by--

The High School Rights Committee of the
N.Y.C. G.O. Council in consultation with
the H.S. Student Mobilization Committee
and the Third World Committee.

Ed Acherman, Chairman, G.O. City Council, H.S. Rights Committee, Francis Lewis H.S.

Raynetta Adams, G.O. City Council, Walton H.S.

Arthur Schwartz, Vice President, G.O. City Council, Bronx H.S. Science

Jackie Zinman, G.O. City Council, H.S. Music and Art

Sarah Gewanter, G.O. City Council, H.S. Music and Art

Larry Wheatman, G.O. City Council

Louis Tempkin, G.O. City Council, John Dewey H.S.

Eileen Broakoff, G.O. City Council, John Dewey H.S.

and

Don Reeves, President, G.O. City Council, H.S. Music and Art

We, the students of the Senior High Schools of N.Y.C. do believe that in order to effectively pursue our education, we must be guaranteed the following rights and responsibilities. The enumeration in this document of certain rights shall not be construed to deny or disparage others retained by students.

STUDENT GOVERNMENT

1. Each high school shall have an elected and truly representative Student Government in which all students may take part without faculty or administration limitation.
    a) Every student shall be allowed to vote; elections shall be held on a regular school day.
    b) The government shall be elected annually.
    c) Candidates for office shall be permitted to wage a "real" (unlimited) campaign with the use of all school facilities.
    d) The student government shall have the right to act on all matters concerning students.
    e) The student government shall be independent of the administration and the faculty adviser.
    f) The student government shall have complete control over extra-curricular activities; student money shall be spent by students; all money raised by school, extra-curricular activities shall go into a separate students bank account. Should any individual organization raise funds for itself, any such funds would be deposited in the student bank account in the name of that organization and shall be solely available for their own use.
    g) The student government shall have free access to all school facilities without interference from the administration or adviser.
    h) No less than eight assembly programs per term shall be made available to the student government without interference from the administration.

2. There shall be established a School Liaison Board.
    a) The School Liaison Board shall consist of 10 students, 4 teachers, the principal and 5 representatives of the parent body. Each must have an official alternate.
    b) The officers of the student government shall serve on the School Liaison Board; all remaining students shall be determined in a manner to be chosen by the students of each individual school.
    c) The School Liaison Board shall meet at least once a week with dates and times to be determined by the Board.
    d) Emergency meetings may be called by a majority vote of any one of the representative groups.
    e) All recommendations and resolutions rendered by a majority vote of members at any official meeting of the School

Liaison Board shall be considered final, absolute and binding on the faculty, administration and student body of each school.

f) The jurisdiction of the School Liaison Board will cover: any proposed changes concerning exams, programs, school year calendar, discipline, faculty, entrance requirements, curricular activities and general school policy.

g) With the use of continuing contracts, it would be beneficial to set up a system for evaluating each certified employee and make a decision as to the advisability of rehiring or dismissing the individual at the end of each contract. The School Liaison Board shall be used for such a purpose.

h) The principal shall make available all information that concerns the School Liaison Board.

i) Every student has the right to an audience with the principal or School Liaison Board, as he chooses.

j) One third of the membership of each representative group shall constitute a quorum.

3. Faculty advisers shall be selected by the student groups and recommended to the administration for appointment. Each school shall specifically define the role and powers of these advisers.

4. There shall be a student member on the Board of Education with full voting privileges.

FREEDOM OF EXPRESSION

1. Students shall have the right to distribute political leaflets, newspapers and other literature without prior authorization, without censorship and without fear that the ideas expressed will be recorded for future use against them, in or adjacent to the school, as long as the manner of dstribution does not substantially block, obstruct or interfere with anyone else's rights.

2. School publications shall reflect the policy and judgment of the student editors, without censorship by the school administration, except cases concerning defamation and/or obscenities. All student groups shall be allowed access to the newspaper to advertise their activities and ideas.

3. Students shall have the right to wear buttons, armbands or other badgesof symbolic expression.

4. All flag salutes, pledges of allegiance and other ceremonies of political loyalty are optional for both students and teachers.

5. Students shall have the right to choose their own dress, conduct and personal appearance.

6. Students have a right to meet on school property to discuss or express their opinions on any topic (e.g., a topic which is not a part of a prescribed school exercise). Students are entitled to freedom of expression, not only in the classroom, but everywhere in the school.

7. Students may form clubs, political and social organizations, including those which champion unpopular causes.
   a) They shall have the power to govern themselves according to their own system.
   b) These organizations shall have access to school facilities, with the ability to distribute its publications and publicize its point of view.
   c) They shall have the right to invite outside speakers into the school regardless of their political beliefs.
   d) These organizations may lobby for the purpose of changes in curriculum and school policy.

8. Students have the right to a lounge in which they may spend their free periods.

FREEDOM FROM DISCRIMINATION

1. Students shall be free from discrimination on the basis of ethnic background, sex, group membership, economic class, place of residence or any other personal factor.

2. No law shall be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition" the administration "for a redress of grievances."

DUE PROCESS

1. The right to attend public school shall not be denied without due process of law.
   a) Students shall receive annually, upon the opening of school, a publication giving adequate notice of all rules and regulations, this Student Bill of Rights, and the penalties which may be imposed for violations thereof. It shall be distributed to parents as well.
   b) There shall be no suspension unless deemed necessary by the School Liaison Board.
   c) Students shall have a fair hearing prior to suspension, expulsion, transfer or any other serious sanction.
   d) The right to counsel shall be upheld for all students, including those who cannot afford counsel.

e) Students shall have the right to counsel at all disciplinary proceedings which may have serious consequences.
f) Students shall have the right to confront the evidence against them, including the right of parents to see at any time their children's records (i.e., permanent individual record card).
g) Students have the right to confront complaints, call friendly witnesses and cross examine hostile ones.
h) Students shall have the right to an impartial examiner, such as those afforded teachers facing dismissal.
i) The student shall have the right to an effective appeal from the decision at a disciplinary hearing, including the right to a transcript.
j) Students shall have the right to be free from forced self-incrimination.
k) Students shall have upon request a hearing before the School Liaison Board.

2. Students and their parents shall have the right to file complaints against school officials before the School Liaison Board.

3. Students have the right to security in their persons, papers and effects against arbitrary search and seizures.

4. Students shall be free from the illegal use of police by school officials as an adjunct to their own authority, in the absence of crime or any threat of crime. Any use of police shall be subject to review by the School Liaison Board.

5. Students shall be free from the use of personal behavior files as a method of student evaluation.

6. Schools shall be open daily to parental observation.

7. The student body shall have the right to be free from the presence of any influence of federal, state or city agencies not directly involved in the educational process, unless sanctioned by the School Liaison Board, with the understanding that this right may be revoked by this same board.

8. Decisions concerning students rights made by school personnel are subject to the jurisdiction of the School Liaison Board and may be appealed to the Assistant Superintendent, the Chancellor and then to the courts.

9. Students shall be free from the school's jurisdiction in all non-school activities, be it their conduct, their movements, their dress or their expression of their ideas. No disciplinary action may be taken by the school for out-of-school

political activities provided that the student does not claim, without authorization, to speak or act as a representative of the school. When an out-of-school activity results in police action, it is an infringement on his liberty for the school to punish that activity, or to enter it on the school records or report it to prospective employers or other agencies, unless authorized by the student. A student who violates any laws shall not be placed in jeopardy at school for an offense which is not concerned with the educational institution.

PERSONAL COUNSELING

1. All students shall have the right to receive information on abortion and contraception. A personal counselor shall be provided with whom the student may consult without fear that it will be recorded on his record.

2. All students shall have the right to receive information on drugs. A personal counselor shall be provided with whom the student may consult without fear that it will be recorded on his record.

3. All students shall have the right to draft counseling at his school. A personal counselor shall be provided with whom the student may consult without fear that it will be recorded on his record.

CURRICULUM

1. There shall be a complete examination of all books and educational supplies upon request of the majority of the student body, and/or the School Liaison Board, and/or the majority of the minority groups.

2. There shall be no tracking system in the school, for example, to direct women into traditional "women's occupations," or to direct oppressed minorities into inferior occupations.

3. The school shall make available vocational training and work experience to all students.

4. All students shall have a pass-fail option for a grade in all minor subjects, since these grades are not considered when a student's grade-point average is computed for college entrance.

5. Students shall have the right to voluntarily choose electives.

6. Students shall have the right to take part in co-educational health education and hygiene classes.

7. No students shall be required to take Regents examinations.

8. There shall be instituted in each school library a minorities studies selection which shall include a section on women and other minority groups.

9. Cultural exchange programs shall be permitted between schools with arrangements and programs to be decided upon by students.

FINANCIAL ASSISTANCE

1. All students shall be supplied with all school supplies, free transportation to and from school and other financial assistance which is needed by the student as a result of his attending school.

PROCESS OF AMENDMENT

1. This document may be amended by a two-thirds vote of the entire membership of the New York City G.O. Council.

3. New York City (officially adopted code)

RIGHTS AND RESPONSIBILITIES OF HIGH SCHOOL STUDENTS

As Codified by the Board of Education
Of the City School District of the
City of New York

September 1970

Introduction

For the past year, the Board of Education and the executive staff have been engaged in an effort to codify the rights and responsibilities of high school students in this period of social change. Students, parents, teachers and city-wide organizations have been involved in an extended dialogue on this subject. After many reviews and revisions, this statement is herewith issued.

The rights and responsibilities set forth below in no way diminish the legal authority of school officials and the Board of Education to deal with disruptive students. The statement is meant to foster greater understanding so that all concerned can participate more effectively in an active educational partnership.

Principals of high schools will develop plans for discussion of its provisions and for the initiation of procedures to make it fully operative.

STATEMENT OF RIGHTS AND RESPONSIBILITIES

1. In each high school there should be established an elective and representative student government with offices open to all students. The student government will establish reasonable standards for candidates for office. All students should be allowed to vote in annual elections designed to promote careful consideration of the issues and candidates.

> a. The student government shall have the power to allocate student activity funds, subject to established audit controls and the by-laws of the Board of Education. Extra-curricular activities shall be conducted under guidelines established by the student government. The student gov-

ernment shall be involved in the process of developing curriculum and of establishing disciplinary policies.

b. Representatives selected by the student government shall meet at least monthly with the principal to exchange views, to share in the formulation of school-student policies and to discuss school-student relations and any other matters of student concern.

2. A parent-student-faculty consultative council, as established by previous Board of Education resolutions, shall meet at least monthly to discuss any matter relating to the high school. The consultative council shall organize a sub-committee to consider matters of school-wide concern submitted by individual students. The sub-committee shall place such problems on the agenda of the consultative council when appropriate. The consultative council shall establish a continuing relationship with the principal to secure information regarding the administration of the school, to make recommendations for the improvement of all school services and to promote implementation of agreed-upon innovations. Its structure and operating procedures shall be placed on file with the Chancellor.

3. Official school publications shall reflect the policy and judgment of the student editors. This entails the obligation to be governed by the standards of responsible journalism, such as avoidance of libel, obscenity and defamation. Student publications shall provide as much opportunity as possible for the sincere expression of all shades of student opinion.

4. Students may exercise their constitutionally protected rights of free speech and assembly so long as they do not interfere with the operations of the regular school program.

a. Students have a right to wear political buttons, arm bands and other badges of symbolic expression, as long as these do not violate the limits set in 4c, below.

b. Students may distribute political leaflets, newspapers and other literature at locations adjacent to the school.

c. Students shall be allowed to distribute literature on school property at specified locations and times designated. The principal and the student government shall establish guidelines governing the time and place of distribution at a site that will not interfere with normal school activities. They will also provide for sanctions against those who do not adhere to prescribed procedures. No commercial or obscene material, nothing of libelous nature or involving the defamation of character nor anything advocating racial or religious prejudice will be permitted to be distributed within the school. In noting these exceptions, it is clearly the intention of the Board of Education to promote the dissemination of diverse viewpoints and to foster discussion of all political and social issues.

d. Students may form political and social organizations, including those that champion unpopular causes. These organizations, however, must be open to all students and must abide by Board of Education policies as developed in guidelines established by the student government acting in concert with the principal. These organizations shall have reasonable access to school facilities.

5. Faculty advisors shall be appointed by the principal after consultation with the student group.

6. Students have the right to determine their own dress, except where such dress is clearly dangerous, or is so distractive as to clearly interfere with the learning and teaching

process. This right may not be restricted even by a dress code arrived at by a majority vote of students as Dr. Ewald Nyquist, New York State Commissioner of Education, held last year in decisions nos. 8022 and 8023.

7. Students shall receive annually upon the opening of school a publication setting forth rules and regulations to which students are subject. This publication shall also include a statement of the rights and responsibilities of students. It shall be distributed to parents as well.

8. A hearing must be held within five school days of any suspension as prescribed by law and the circulars of the Chancellor.

9. The extent and definition of student rights and responsibilities are subject to discussion by the consultative council. Appeals from the decisions of the head of the school, relating to rights and responsibilities herein enumerated, must first be lodged with the assistant superintendent in charge of high schools, then the Chancellor, and finally the Board of Education. All such appeals shall be decided as quickly as possible.

10. Rights also entail responsibilities. One of the major goals of this document is to establish a new trust based on the humane values of self-respect and respect for others. No student has the right to interfere with the education of his fellow students. If dialogue is interrupted or destroyed, then the bonds that hold us together are broken. It is thus the responsibility of each student to respect the rights of all who are involved in the educational process.

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

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Adopted by the San Francisco
Board on March 31, 1971.

4. San Fransisco

Proposed Policy Respecting the Right of Students to Circulate Petitions and Handbills, to Use Bulletin Boards, to Wear Insignia and to Form Associations.

The primary liberties in a student's life have to do with the process of inquiry and learning, of acquiring and imparting knowledge, and of exchanging ideas. This process requires that students have the right to express opinion,to take stands, and to support causes, publicly or privately. There should be no interference in the school with these liberties, or with the student's access to or expression of controversial points of view, except as provided below.

(1) Bulletin Boards-Students must restrict themselves to the use of certain designated bulletin boards for any materials which the students wish to put up. The bulletin boards shall be situated in prominent places as designated by the School Free Speech Committee defined in paragraph (5). This committee shall also regulate the placing, usage and control of these bulletin board There shall be no prior censorship or requirement of approval of the contents or wording of notices or other communications, but the following general limitations on posting may be applied

(a) Materials may be removed only if they are obscene, libelou or slanderous according to current legal definitions; or create a clear and present danger of the commission of an unlawful act, or of immediate physical disruptive of the school.

(b) Material shall be dated before posting and removed within a prescribed reasonable time. The time shall be determine by the School Free Speech Committee, thus assuring full access for all to the bulletin boards.

(2) Distribution of Printed Material and Circulation of Petitions Students shall be free to distribute handbills, leaflets and other printed material and to collect signatures on petitions concerning either school or out-of-school issues, whether such materials are produced within or outside the school. There shall be no prior censorship or requirement of approval of the contents or wording of such material, but the following limitations may be applied.

(a) The time of such activity shall be limited to periods before school begins, after dismissal, and during lunch time and free time if necessary not to interfere with the school program.

(b) The place of such activity shall be reasonably restricted to permit the normal flow of traffic within the school and at exterior doors.

(c) The manner of conducting such activity shall be restric to prevent the use of coercion in obtaining signatures on petitions. Those distributing any materials shall refrain from making undue levels of noise in order tha they do not disturb normal school activities. The dang of littering is not a sufficient ground for limiting th right of students to distribute printed material.

(d) Only material within the restricted categories of paragraph 1 (a) above may be limited as to distribution.

In the case of petitions presented by students to the school authori students shall have the right to have their petitions considered and to receive an authoritative reply thereto.

(3) Buttons and Badges-The wearing of buttons, badges or armband whether bearing slogans, sayings or having symbolic meaning shall be permitted as another form of expression unless the message thereof falls within the restricted categories of paragraph 1(a). No student, teacher or administrator, at any location on school premises (in or out of the classroom) shal interfere with this practice on the grounds that the message or meaning may be unpopular with students, faculty or school administration.

(4) Clubs and Organizations-Students may form any clubs or organi zations which they desire providing the club is open to any attending student, is not in violation of prohibitions against secret organizations contained in State Education Cod Section 10604, and does not violate the principles of paragra 1(a).

(5) In imposing limitations on student expression for any reason under any of the foregoing provisions the school must ensure that its rules are applied on a non-discriminatory basis and in a manner designed to assure maximum freedom of express to the students. The school shall particularly avoid any act placing restraints on ideas prior to their expression. Any student or student group allegedly deprived of freedom of expression under any of these provisions shall have the right request a hearing to determine whether such deprivation has taken place. Such a hearing must be held within 1 school day of the request before an impartial body to be designated as t School Free Speech Committee. This committee shall be compos of 1 administrator, 2 teachers and 2 students. Any teacher o student who desires to sit on this committee may submit his name. The two teachers and two students on the committee sha be choosen at random from those persons who have volunteered to sit on the committee. The hearing shall provide for a ful and fair opportunity for both sides to produce evidence and arguments as to the alleged deprivation of freedom of express Any administrator teacher or other school personnel who remov any material or interferes with distribution of any printed material, circulation of petitions or other exercise of freed of expression by any student or student group shall be requir to report such action to the Free Speech Committee immediatel thereafter.

5. Pittsburgh

PITTSBURGH BOARD OF PUBLIC EDUCATION
CODE PROHIBITING SERIOUS STUDENT MISCONDUCT

March 23, 1971

RULE 1. DISRUPTION OF SCHOOL

A student shall not by use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance, or any other conduct intentionally cause the substantial and material disruption or obstruction of any lawful mission, process, or function of the school.

Neither shall he engage in such conduct with the deliberate intention of causing the substantial and material disruption or obstruction of any lawful mission, process, or function of the school if such a disruption or obstruction is reasonably certain to result.

Neither shall he urge other students to engage in such conduct with the deliberate intention of causing the substantial and material disruption or obstruction of any lawful mission, process, or function of the school if a substantial and material disruption or obstruction is reasonably certain to result from his urging.

RULE 2. DAMAGE, DESTRUCTION OR THEFT OF SCHOOL PROPERTY

A student shall not intentionally cause or attempt to cause substantial damage to school property, or steal or attempt to steal school property of substantial value. Repeated damage or theft involving school property of small value also shall be considered an act of serious student misconduct.

RULE 3. DAMAGE, DESTRUCTION OR THEFT OF PRIVATE PROPERTY

A student shall not, either on the school grounds or during a school activity, school function, or school event off school grounds, intentionally cause or attempt to cause substantial damage to private property, or steal or attempt to steal valuable private property. Repeated damage or theft involving private property of small value also shall be considered an act of serious student misconduct.

RULE 4. ASSAULT ON A SCHOOL EMPLOYEE

A student shall not intentionally cause or attempt to cause physical injury or intentionally behave in such a way as could reasonably cause physical injury to any school employee

(1) on the school grounds during and immediately before or after school hours,

(2) on the school grounds at any other time when the school is being used by a school group, or

(3) off the school grounds at any school activity, function or event.

Self-defense is not to be considered an intentional act under this rule.

RULE 5. PHYSICAL ABUSE OF A STUDENT OR OTHER PERSON NOT EMPLOYED BY THE SCHOOL

A student shall not intentionally do serious bodily injury to any person

(1) on the school grounds during and immediately before or immediately after school hours,

(2) on the school grounds at any other time when the school is being used by a school group, or

(3) off the school grounds at any school activity, function, or event.

Self-defense is not to be considered an intentional act under this rule.

RULE 6. WEAPONS AND DANGEROUS INSTRUMENTS

A student shall not knowingly possess, handle, or transmit any object that can reasonably be considered a weapon

(1) on the school grounds during and immediately before or immediately after school hours,

(2) on the school grounds at any other time when the school is being used by a school group, or

(3) off the school grounds at any school activity, function, or event.

This rule does not apply to normal school supplies like pencils or compasses but does apply to any firearm, any explosive including firecrackers, any knife other than a small penknife, and other dangerous objects of no reasonable use to the pupil at school.

RULE 7. NARCOTICS, ALCOHOLIC BEVERAGES, AND STIMULANT DRUGS

A student shall not knowingly possess, use, transmit, or be under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind

(1) on the school grounds during and immediately before or immediately after school hours,

(2) on the school grounds at any other time when the school is being used by any school group, or

(3) off the school grounds at any school activity, function, or event.

Use of a drug authorized by a medical prescription from a registered physician shall not be considered a violation of this rule.

RULE 8. REPEATED SCHOOL VIOLATIONS

A student shall not repeatedly fail to comply with directions of principals, teachers, or other authorized school personnel during any period of time when he is properly under the authority of school personnel.

PITTSBURGH BOARD OF PUBLIC EDUCATION
PROCEDURES FOR DEALING WITH STUDENT MISCONDUCT

March 23, 1971

GENERAL PROVISIONS

SECTION 1. COVERAGE

Alleged misconduct shall be dealt with by the Principal or his designee:

(a) whenever a teacher considers a problem of classroom discipline to be so serious as to warrant the Principal's attention; or,

(b) whenever the alleged misconduct constitutes a violation of the rules that govern serious misconduct; or,

(c) whenever the Principal deems it advisable that he deal personally with the misconduct.

Where the alleged violation of the Rules contained in the Code Prohibiting Serious Student Misconduct has occurred away from the school facilities or events under the direct supervision of the Principal of the school where the student is enrolled, the alleged misconduct shall be dealt with by the Area Superintendent or his designee having responsibility for the Area in which the student is enrolled.

SECTION 2. REFERRALS OF MISCONDUCT TO SCHOOL OFFICES

A. Teachers shall continue to make every effort to resolve discipline problems as fully as possible within their own classrooms or other areas of responsibility.

B. A teacher may refer a student to the school office where an alleged violation of the Rules contained in the Code has occurred or where repeated problems of an individually less severe nature have occurred and where, despite the personal efforts of the teacher(s) involved, the alleged misconduct has not been satisfactorily corrected.

C. The teacher shall confer with the Principal and upon the request of the Principal shall submit a written statement of the facts relating to the alleged misconduct as the teacher knows them. The statement shall be upon a form approved by the Assistant Superintendent for System-Wide Services.

D. The teacher and the student shall be informed in all cases of the results of any conference and/or the adjustment related thereto. In situations where the Principal determined that the teacher's presence at the conference was inadvisable or unnecessary, the teacher may request to be informed in writing of the results of said conference and/or adjustment.

E. No student shall be returned or readmitted to the regular class from which he was referred to the school office under this Section until the teacher involved has received the results of the Principal's investigation and his decision regarding adjustment. Such results shall be communicated to the teacher on the same day the decision is rendered.

F. Proper records of all teacher referrals involving serious student misconduct shall be maintained in the school office, in a manner approved by the Area Superintendent and the Assistant Superintendent for System-Wide Services. Such records of referrals shall not be made upon the student's permanent record card.

SECTION 3. PRINCIPAL'S INVESTIGATION

In dealing with alleged misconduct, the Principal shall investigate the incident and hear all available accounts of it. The student shall be afforded the opportunity to raise any defense he thinks relevant, and shall be permitted, at his option, to submit a written statement of the facts relating to the alleged misconduct. If the student requests that other witnesses be questioned, the Principal should talk to them if possible. If the student makes a reasonable claim of other defensive matter that, if true, would free him from blame but is not immediately available, the Principal may postpone disciplinary action for a reasonable time until such evidence may be presented to him, provided that the orderly functioning of the school is not adversely affected.

SECTION 4. LIMITATION ON PRINCIPAL'S POWER TO SUSPEND OR TO REQUEST A HEARING

If the Principal investigates a student's alleged misconduct and decides to take disciplinary action, he must investigate and take action on all alleged misconduct known to him at that time. The most serious action he can take on his own authority for any and all misconduct by a particular student, known to him at any one time, is to give a three-day suspension. If upon hearing and reviewing all available accounts of the alleged misconduct, and after a conference with the parents whenever possible, the Principal determines that a penalty in excess of a three-day suspension is appropriate, he shall immediately refer the matter to the Office of the Area Superintendent of Schools and initiate the procedure for obtaining a review and determination consistent with the following provisions. The teacher shall be kept informed in all cases of the results of any conference and/or the adjustment related thereto.

SECTIONS APPLICABLE TO SUMMARY AND TEMPORARY SUSPENSIONS

SECTION 5. SUMMARY SUSPENSION

If the Principal witnesses any serious student misconduct and he thinks that immediate removal of the student(s) is necessary to restore order or to protect persons on the school grounds, he may suspend the student immediately for not more than two school days.

In such cases the Principal is not required to conduct the investigation described in Section 3 before he suspends, but he shall initiate such an investigation at the earliest possible time and decide on further disciplinary action, if any, at least by the end of the school day following the summary suspension. If he thinks an additional suspension is necessary, the total suspended time under the Principal's authority shall not exceed three school days.

SECTION 6. TEMPORARY SUSPENSION

A temporary suspension is a denial to the student of the right to attend school and to take part in any school function for any period of time up to three school days. The Principal may invoke a temporary suspension only after investigating the misconduct and only for the following reasons:

(a) a violation of the Code Prohibiting Serious Student Misconduct, or

(b) misconduct of the same type as that prohibited by the rules governing serious student misconduct, but which does not rise to the gravity of the misconduct stated by these rules, or

(c) repeated misconduct of an individually less severe nature that has created a substantial disruption of the educational process within the school.

SECTION 7. INFORMING THE PARENTS IN CASES OF SUMMARY AND TEMPORARY SUSPENSION

When a student is suspended, the Principal shall:

(a) attempt to contact the student's parents to inform them of the school's action and to request that they come to the school for their child. If a parent cannot be immediately notified of the suspension, the Principal may require the student to remain in the school, in suspended status, for the remainder of the school day;

(b) send a statement to his parents and to the Office of the Area Superintendent fully describing the student's misconduct, stating the rule violated, and stating the Principal's reasons for action;

(c) make every effort to hold a conference with the parents before or at the time the student returns to school;

(d) secure written statements when appropriate and keep on file all documents and relevant information received about the misconduct.

SECTIONS APPLICABLE TO SUSPENSIONS IN EXCESS OF THREE SCHOOL DAYS, TRANSFERS OR EXPULSIONS

SECTION 8. INITIATING SUSPENSION, TRANSFER OR EXPULSION

If, after his investigation, the Principal decides that a penalty more severe than any within his own authority is warranted, he shall immediately notify the Office of the Area Superintendent and ask that a hearing date be set. Any request for action not within the authority of the Principal shall be set forth in writing, on a form approved by the Assistant Superintendent for System-Wide Services, and forwarded to the Office of the Area Superintendent within three school days of the alleged misconduct. The procedure contained herein does not affect the Principal's authority to invoke a temporary suspension or other sanction after his investigation.

SECTION 9. NOTICE

Whenever the Principal seeks a suspension exceeding three days, a transfer, or an expulsion, written notice shall be sent to the student and to his parents within three school days of the alleged incident(s) which gave rise to the request.

The notice shall include:

(a) the rule allegedly violated and the acts of the student thought to have violated the rule, including a summary of the evidence against him;

(b) a tentative time and place for the hearing;

(c) notification that written statements about the misconduct, if any, and the student's academic and behavior records are available at the school for examination by the student, his parents, and his representative;

(d) a description of the hearing procedures approved by the School Board;

(e) a statement that the student has the right to a hearing which may be waived if he and his parents agree to forego it by furnishing the Principal a signed statement to that effect;

(f) a statement of the action that the Principal plans to recommend to the Superintendent through the Area Superintendent, and plans to apply if the hearing is waived;

(g) a statement that the student and his parent have the right to present witnesses and be represented at the hearing by legal counsel or some other adult.

SECTION 10. SCHEDULING OF THE HEARING

The Office of the Area Superintendent shall examine the Notice(s) of Suspension submitted by the Principal and shall review both the facts set forth thereon and the action recommended by the Principal. In those cases wherein the recommendation of the Principal does not exceed a ten (10) school day suspension and the Area Administrator has substantial reason to believe that the student shall be readmitted to school within ten (10) school days, the matter shall be treated as a Short Term Suspension. In any case wherein either (a) the recommendation of the Principal exceeds a ten (10) school day suspension or (b) the Area Administrator has substantial reason to believe that the student shall not have been readmitted to a school within ten (10) school days, the matter shall be treated as a Long Term Suspension.

A. Short Term Suspensions

The Office of the Area Superintendent shall schedule all hearings involving Short Term Suspensions, as herein defined, to be held within ten (10) school days of the first day of suspension. The Area Administrator shall make every effort to schedule the hearing on the first available date following the suspension. In any case wherein a hearing has not been held within ten (10) school days through no fault of either the involved student or his parents, and in any case wherein the student remains out of school beyond ten (10) school days, the matter shall be treated as a Long Term Suspension.

B. Long Term Suspensions

The Office of the Area Superintendent shall schedule all hearings involving Long Term Suspensions, as herein defined, to be held within fifteen (15) school days of the first day of suspension, provided that a hearing may be held at a later time if a request therefor is made by either a student or his representative, the Principal concurs therein, and good and sufficient cause is shown for the delay. Failure of a student and his parents or representative to appear at any hearing for which adequate notice has been given shall operate to suspend the limitations upon hearing dates contained herein.

In any case wherein the student has been excluded from school, the parents or their representative may contact the Office of the Area Superintendent requesting the temporary reinstatement of the student pending any hearing. No student shall be temporarily reinstated except upon the authority of the Area Superintendent and unless it appears from all the available facts that the reinstatement can be accomplished without further interruption to the proper functions of the school and the reinstatement shall significantly contribute to the prevention of substantial harm to the educational program of the student.

SECTION 11. AVAILABILITY OF RECORDS

Besides being provided with a copy of the Notice set forth in Section 9, above, the parents or representative of the student involved shall have access to his previous behavior record and his academic record. If the Office of the Area Superintendent deems it necessary, the information contained in such records may be furnished to the parents or representative only on condition that it be explained and interpreted to the parents or representative by a person trained in its use and interpretation.

SECTION 12. ATTENDANCE AT THE HEARING

A. Short Term Suspensions

The hearing may be attended only by the Assistant Superintendent for System-Wide Services, the Area Superintendent, the Area Administrator, the Principal, the student, the parents and the student's representative, who may be a lawyer.

B. Long Term Suspensions, and Expulsions

A school director, sitting as a committee of one of the Board of Public Education, together with appropriate staff, as included in Section 12 (A), above, shall hear all cases involving suspensions exceeding ten (10) school days and expulsions from the school system.

SECTION 13. CONDUCT OF THE HEARING

A. Closed Hearing

Witnesses, including teachers involved, should be present only when they are giving information. Conduct of all parties at any hearing shall be under the direct control of the hearing officer, who shall be the School Director or School Administrator conducting the hearing.

The student may be excluded at the discretion of the hearing officer, with the concurrence of the student's parents (or the representative when he acts in the place of the parents) at times when his psychological or emotional problems are being discussed.

B. Student May Remain Silent

The student may speak in his own defense and may be questioned on his testimony, but he may choose not to testify and in such cases he shall not be threatened with punishment or later punished for refusal to testify.

C. Records of the Hearing

At the request of the parents or the student's representative, the hearing board shall provide for making a record of any information orally presented to it at the hearing. Statements and other written matter presented to the hearing officer shall be kept on file in the Office of the Area Superintendent for a period not to exceed thirty (30) days following the conclusion of the hearing and the rendering of a final decision.

D. Use of Witnesses

The hearing shall consist of the oral examination of all witnesses that the hearing officer determines may provide information on the matters involved, as well as a review of school records when requested by any party.

Where the Principal, the Area Administrator and the student or his representative agree that the presence of a witness is unnecessary and that his written statement is adequate to convey his information to the Board, he may be excused by the hearing officer. If an unexcused witness does not appear, no statement made by him may be considered or relied upon.

E. Adult Representation in Addition to Parents

If the parents cannot be present or if the student or his parents think his interests can be protected better by the presence at the hearing of another adult in addition to his parents or guardian, the student may bring another adult to the hearing. The non-parent adult may act as a representative in the defense of the student, with the right to present witnesses, question any and all witnesses, make a statement on the nature of the evidence and the proper disposition of the case, and otherwise assist the student.

SECTION 14. DISPOSITION OF THE CASE

A. Actions of the Area Superintendents

In all cases involving a Short Term Suspension, the Office of the Area Superintendent shall reach its decision on whether a student violated a rule contained in the Code Prohibiting Serious Student Misconduct. The decision shall be based solely upon the evidence presented at the hearing, and shall set forth Findings of Fact on which the decision rests. If no misconduct is found, the matter shall be terminated forthwith and the student reinstated in school.

When some misconduct is found, the decision shall include a recommendation to the Superintendent of Schools, setting forth what action, if any, should be taken with respect to the student. The recommended action may not exceed an exclusion from school of fifteen (15) school days for a Short Term Suspension. It shall include a statement of the Area Administrator setting forth the needs of both the student and the school and the reasons for the particular disposition recommended by the Superintendent.

B. Actions of the Superintendent

Upon the recommendation of the Office of the Area Superintendent, the Superintendent of Schools may confirm a suspension not to exceed fifteen (15) school days, and shall forthwith notify both the student and the parents of the decision reached and the sanction imposed.

In all cases involving a Long Term Suspension or Expulsion, the reports and recommendations of the Superintendent of Schools shall be transmitted to the Board along with the report and recommendation of the School Director.

All suspensions in excess of five (5) school days, together with all transfers arising from a breach of the rules relating to serious student misconduct, shall be reported to the Board of Public Education within thirty (30) calendar days.

C. Actions of the Board of Public Education

The Board, through a School Director sitting as a committee of one, may suspend any pupil for a period not to exceed thirty (30) school days without further action. On any suspension exceeding thirty (30) school days, and in all cases of expulsion, the action of the Board shall not be final until the report and recommendation of the School Director who heard the case has been reviewed and approved by a majority of the full membership of the Board.

Both the student and the parents shall be immediately notified in writing of any action taken by either the Area Superintendent, the Superintendent of Schools, or the Board of Education. Such notice shall set forth the right of the parents to appeal any such action taken.

SECTION 15. APPEAL

The student may, through his parents or his representative, appeal to the Board of Public Education any action invoked by the Superintendent by which the student feels himself aggrieved. The action need not be postponed pending the outcome of the appeal. Such an appeal must be on the record and new evidence will be admitted only to avoid a substantial threat of unfairness.

The Board of Public Education shall act upon all appeals within twenty (20) school days of the filing of Notice of the Appeal. Any decision of the Superintendent of Schools shall be altered only in those cases where the Board of Public Education finds the decision clearly erroneous.

A decision by the Board of Public Education adverse to the student may be appealed to a court of law.

DEFINITIONS

1. **PARENT:** When used in these procedures, the term "parent" shall include every parent, guardian or person in parental relation, having control or charge of any child or children in attendance in the Pittsburgh Public Schools.

2. **PRINCIPAL:** When used in these procedures, the term "principal" shall refer to either the principal, a vice principal, or any other school administrator in charge of a public school to whom the principal may properly delegate his authority.

Pittsburgh, cont.

April 20, 1971

REVISION OF PROCEDURES FOR DEALING WITH STUDENT MISCONDUCT

RESOLVED, that Section 1 of the Procedures for Dealing with Student Misconduct, adopted March 23, 1971, be amended by deleting ( ) the words "or his designee" from the first sentence thereof, so that the said Section 1 shall read, as amended, as follows:

"SECTION 1. COVERAGE

Alleged misconduct shall be dealt with by the Principal (or his designee)......" (etc.)

RESOLVED FURTHER, that Section 13 of the Procedures be amended by adding the following proviso to sub-section E thereof:

"SECTION 13. CONDUCT OF THE HEARING

......

E. Adult Representation in Addition to Parents

...... The non-parent adult may act as a representative in the defense of the student, with the right to present witnesses, question any and all witnesses, make a statement on the nature of the evidence and the proper disposition of the case and otherwise assist the student; Provided, however, that in all cases the student's right to confront his accusers and right to cross-examine all witnesses shall be preserved and protected."

RESOLVED FURTHER, that Section 14 of the Procedures be amended by adding thereto the following new sub-sections:

"Section 14. DISPOSITION OF THE CASE

......

D. Reinstatement Pending a Hearing

Notwithstanding any other provision contained herein, any student who has been suspended for a period of either ten (10) school days or fourteen (14) calendar days, whichever first occurs, without being afforded an opportunity for a hearing, as provided by the Public School Code of 1949, as amended, shall be automatically reinstated pending a hearing and proper disposition thereof.

E. Requirement for Due Process

All hearings held pursuant to the within procedures shall be in accordance with the constitutional requirements of due process and the Public School Code of 1949, as amended."

Pittsburgh, cont.

NEIGHBORHOOD
LEGAL
SERVICES
ASSOCIATION

OFFICE OF THE DIRECTOR
310 Plaza Building
Pittsburgh, Pennsylvania 15219
Phone: (412) 281-1662

April 21, 1971

Mr. Ira Glasser
Executive Director
New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Dear Mr. Glasser:

Pursuant to Tom Kerr's request in his letter to me dated April 5, 1971 a copy of which was sent to you I am sending a report on Lorene Travis et al. vs. Natalie Kunkel et al.

Lorene Travis was a student in the Pittsburgh School System who allegedly struck the vice-principal of her school. Without giving Lorene Travis a hearing the principal summarily suspended her from school. An informal guidance conference was conducted three days after the initial suspension but did not resolve the student-school conflict. Fourteen (14) days after the initial suspension Neighborhood Legal Services (NLS) went into the Allegheny Court of Common Pleas (Court) requesting that the Pittsburgh Board of Public Education (Board) be preliminarily enjoined from suspending students over five (5) days without a Trial-Type hearing. We alleged in our complaint that both the Pennsylvania Public School Code of 1949 and the Due Process Clause of the United States Constitution mandated this result.

The Pennsylvania Public School Code of 1949 provides in pertinent part:

> "Every principal . . . may temporarily suspend any pupil on account of disobedience or misconduct . . . . The board may, after a proper hearing, suspend such child for such time as it may determine. . . . Such hearings . . . may be delegated to a duly authorized committee of the board."

The Board's defense was twofold: (1) Suspended students were afforded the opportunity of a special education program thereby negating the harmful effect of being deprived of an education and (2) "Temporary Suspension" meant over two-months and minimizing this time would interfere with the Board's non-legal approach of utilizing the efforts of social workers, psychologists, etc to resolve student school conflicts.

The court rejected both the Board's arguments and issued a preliminary injunction ordering the Board to give suspended students (this was a class action) a hearing within twenty (20) school days or reinstate the student. The court also granted our request to retain jurisdiction of the case and to serve interrogatories on the Board immediately as opposed to waiting twenty (20) days from the date of filing the complaint. The complaint and brief NLS submitted to the court are available from the National Clearinghouse Review.

Shortly thereafter, it came to our attention that the Board was violating the court's preliminary injunction by not scheduling hearings by the Board or a committee of the Board consisting of at least one Board Member. See the Pennsylvania Public School Code cited supra. Our concern that a Board Member be present at a hearing did not go to the quality of the hearing and the hearing officers ability to be impartial but was primarily a realization of the fact that most student-school conflicts would be resolved before the Area-Administrator would inconvenience a Board Member and request his presence at a hearing. Negotiations with the Board on the legal requirement of a Board Member's presence were futile. NLS filed a petition for a Rule to Show Cause Why Defendants Should not be held in Contempt of Court. The Board then adopted a substantially good Student Misconduct Code. However, the Board's last minute effort to comply with the court's preliminary injunction was not a defense to a contempt charge and the court held the Board in contempt of court. No sanctions were imposed on the Board.

An understanding of the Board's Student Misconduct Code, would clarify subsequent actions of NLS. The code is divided into three sections. The first section deals with summary suspensions of under three (3) school days. The principal can initiate a suspension of a maximum of three (3) school days and must afford an opportunity for a parental conference within the initial three (3) school day period. If the student is suspended over three (3) school days but under ten (10) school days the student involved has the right to a trial type hearing with a community representative or a lawyer representing him. This hearing must be given within ten (10) school days. For misconduct that warrants suspensions over ten (10) school days the student or his representative has the right to a trial-type hearing with a Board Member present. This long term suspension hearing must also be conducted within ten (10) school days of the initial suspension. I have taken the liberty to enclose a copy of the Boards' Student Misconduct Code as adopted March 23, 1971 and modified April 20, 1971. On April 5, 1971 NLS again went to court to request that the preliminary injunction be made permanent and modified in two significant respects.[1] First, we wanted the time the Board had to give a long-term suspension hearing to be shortened. Second, NLS felt a judicial declaration of the elements of a suspension hearing was essential to prevent the Board from changing its procedures as adopted. It appearing to the court that the parties were very close to agreement negotiations began on April 6, 1971 through April 17, 1971 on a consent order.

The enclosed modifications, to the Boards' Student Misconduct Code, adopted April 20, were made in an attempt to reach a consent decree which failed to materialize because the Board would not permit itself to be bound by a court order to provisions already adopted in the code.

On April 19, 1971 NLS submitted Requests for Findings of Fact and Conclusions of Law to the Court in accordance with the Courts' April 6, 1971 order.

Currently, we are waiting for the court to write an opinion. If I can be of further assistance please do not hesitate to write or call.

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[1] The brief NLS submitted to the Court was a modification of the Petitioner's brief in Goldberg v. Kelly, 397 U.S. 254 (1970).

Sincerely,

Michael P. Malakoff

Michael P. Malakoff, Esq.
Educational Division
Neighborhood Legal Services
310 Plaza Building
Pittsburgh, Pennsylvania 15219

MPM:ah

6. Boston

CODE OF DISCIPLINE

A PUBLICATION OF THE
BOSTON PUBLIC SCHOOLS
WILLIAM H. OHRENBERGER, *Superintendent*

1970

CODE OF DISCIPLINE

I. General responsibility and authority of school personnel.

(1) The administrative head of a school is responsible for maintaining discipline on the school premises adequate to assure the safety of all persons and property in the school and the orderly conduct of the teacher-learning situation, and he has the authority to take all reasonable action to carry out this responsibility except insofar as such action is inconsistent with these regulations.

(2) The classroom teacher, with the assistance of the administrative head as needed, is responsible for maintaining discipline of students in the individual classrooms, and in other places when the students are under his supervision, and the teacher may take all reasonable action to carry out this responsibility except insofar as such action is inconsistent with these regulations.

(3) Other school personnel are responsible for maintaining discipline while students are under their supervision or in the vicinity in which such personnel are working on school premises, and they may take reasonable action to maintain discipline in carrying out this responsibility except insofar as such action is inconsistent with these regulations.

(4) The school may hold all pupils to account for their conduct on the way to and from school whenever such conduct is likely to have an adverse effect on the maintenance of discipline at the school.

(5) Whenever possible, school personnel shall attempt to obtain the cooperation of parents in solving disciplinary problems before they become acute.

(6) Before any major disciplinary measure under these regulations is imposed, school personnel shall provide the pupil involved with a reasonable opportunity to present his version of the facts through his own statements and the statements of other witnesses he wishes to produce.

II. Specific authority of administrative heads of schools, teachers and other school personnel.

(1) An administrative head, teacher, or other school employee may use reasonable and prudent force or restraint for the purpose of maintaining order, safeguarding the persons of pupils and school employees, or removing an offender. Without in any way limiting the foregoing, no school personnel may use physical force with a rattan or otherwise for the purpose of imposing punishment after a student has ceased engaging in misconduct.

(2) The administrative head of a school may temporarily exclude from a class at the written request of a teacher any child who infringes on the rights of other pupils by interfering with the orderly process of teaching and learning, or who endangers the physical or moral well-being of others. Under no circumstance shall a child be excluded to an unsupervised area.

(3) An administrative head or teacher may bring a disciplinary problem to the attention of a pupil's parent or guardian and may require attendance of such parent or guardian at a conference.

(4) An administrative head or a teacher may detain a pupil at the close of school for not more than one hour for disciplinary reasons.

(5) An administrative head may recommend a transfer of a pupil to another equivalent school or to special educational facilities in the school system whenever the student has engaged in criminal conduct, serious or repeated violation of school rules, disruption of classes, injury to others or intentionally placing others in fear of injury, malicious damage to the property of others or the use of profane or obscene language, and the pupil is a persistently detrimental influence to the conduct of the school. Such transfer may take place only in accordance with procedures in Section III.

(6) An administrative head may suspend a student in accordance with the procedures in Section III whenever the pupil has engaged in criminal conduct, serious or repeated violation of school rules, disruption of classes, injury to others or intentionally placing others in fear of injury, malicious damage to property of others or the use of profane or obscene language.

(a) An administrative head shall suspend a student in accordance with the procedure in Section III whenever the student has been found to be in possession of dangerous or illegal weapons.

(b) An administrative head shall suspend a student in accordance with the procedure in Section III whenever the student has been found to be in possession of a mind-disturbing, contraband, and unauthorized drug, alcoholic or not, or found to be under the influence of a mind-disturbing, contraband, and unauthorized drug.

(7) The administrative head may notify police authorities when a pupil, while under school jurisdiction, commits any of the following offenses, or performs other criminal acts: possession or illegal use of dangerous weapons or other objects used contrary to law, drugs or narcotics, alcoholic beverages, fireworks, pornographic or obscene materials, intimidation or extortion, theft, attempted arson, bomb scares, false alarms, assault and/or battery, trespassing, disturbing a school, or immoral acts.

(8) The administrative head may recommend to the School Committee that a student be excluded from the school system when the pupil has been engaged in persistent misconduct of a serious nature and disruptive behavior over a substantial period of time and has not responded to disciplinary action taken against him.

III. Procedures for transfers and suspensions.

(1) Initial suspensions and conference with parent.

(a) Whenever an administrative head decides to suspend or transfer a pupil for disciplinary reasons, he may suspend the pupil for up to three school days if the pupil is under 16 and up to five school days if the pupil is over 16 years of age. In such cases the administrator shall forthwith request the attendance of such suspended pupil and the parent or guardian of such suspended pupil at his office for the purpose of consultation and adjustment. Within the initial period of suspension the administrative head may reinstate the pupil or, after the conference with the parent or guardian, he may refuse to do so. Within said period he may transfer a pupil with the consent of the pupil and his parent or guardian.

(2) Reference of the matter to the assistant superintendent.

(a) If the pupil is neither reinstated within three school days of his original suspension if he is under 16 or within five school days if he is over 16, nor transferred within said period, then the matter shall be referred in writing by the administrative head to the assistant superintendent for the district in which the school is located. The pupil and his parent or guardian shall be notified in writing by the administrative head of their right of appeal and to a hearing before the assistant superintendent and they shall be given his name, address and telephone number.

(3) Hearing.

Upon request of the pupil so suspended or his parent or guardian, said assistant superintendent shall hold a hearing in the matter which shall be conducted as follows:

(a) Reasonable notice of the hearing shall be accorded all parties and shall include statements of the time and place of the hearing. Parties shall have sufficient notice of the facts and issues involved (including a statement of the alleged misconduct and proposed disciplinary action) to afford them reasonable opportunity to prepare and present evidence and argument.

(b) All parties shall have the right to call and examine witnesses, to introduce exhibits, to question witnesses who testify and to submit rebuttal evidence.

(c) The assistant superintendent is not required to observe the rules of evidence observed by courts, but evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

(d) A student shall have the right to be represented by his parent or guardian and/or counsel if the student so chooses.

(e) The decision of the assistant superintendent shall be based solely upon the evidence presented at the hearing and shall be in writing.

(f) Any party shall, at his own expense, have the right to record or have transcribed the proceeding before the assistant superintendent.

(4) Decision.

The assistant superintendent shall reach a decision in the matter within six school days of the original suspension if the pupil is under 16, or within ten school days of the original suspension if the pupil is over 16. A copy of the decision shall be delivered or mailed to the administrative head, to the pupil and his parent or guardian with notification of their right to request that the superintendent review the decision. In the event that the decision is not made within the requisite period of time, and the delay is not due to failure to appear or other inaction on the part of the pupil or his parent or guardian, the pupil shall be reinstated pending the decision.

(5) Review by superintendent.

The administrative head or the pupil so suspended or his parent or guardian may request that the superintendent review the decision of the assistant superintendent and, if such a request is made, the superintendent may, if he so elects, grant a hearing in the matter.

(6) Review by School Committee.

If such case is not settled by the superintendent within five additional school days, the administrative head or the pupil so suspended or his parent or guardian may request that the School Committee review the matter and the School Committee may hold a hearing if it so elects.

(7) Temporary reinstatement.

In the event of appeal by the administrative head to the superintendent or the School Committee, pending decision in the matter by the superintendent or the School Committee, the pupil shall be temporarily reinstated.

IV. Procedures for exclusions.

Whenever an administrative head recommends exclusion, the matter is to be decided by the School Committee after a hearing to be held in accordance with the procedures for hearings in Section III.

V. Required reports.

An administrative head is required to report to the superintendent, the associate superintendent of the proper level, the area assistant superintendent for the district in which the school is located, and to the police all cases of assault and/or battery on school personnel.

VI. Restitution.

Following suspension for wilful defacement, damage, or destruction of school property, payment for defacement, damage or destruction shall be demanded. Terms of payment will be established at the discretion of the administrative head.

VII. Teacher and pupil appeals.

(1) Any teacher who is not satisfied with the action taken by the administrative head in a disciplinary case may appeal the decision in writing to the assistant superintendent, associate superintendent, superintendent, and School Committee in proper order.

(2) Any pupil or any parent or guardian of any pupil against whom disciplinary action is taken who believes that such action is unlawful or in violation of these rules may so indicate in writing to the administrative head and the assistant superintendent who shall investigate the matter.

7. Washington, D.C.

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
William R. Manning, Superintendent

IMPROVING PUPIL BEHAVIOR

A GUIDE TO ACTION
IN THE NATION'S CAPITAL

LuVerne C. Walker, Director of Curriculum
Washington, D. C.
1968 Reprint

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THE TEAM APPROACH

PRINCIPAL
TEACHER
PUPIL
PARENT

Disciplined behavior is most likely to occur when each member of the school understands his part and practices it skillfully.

EACH TEAM MEMBER PERFORMS A VITAL ROLE IN SCHOOL DISCIPLINE

Counselor
Assistant Principal
School Nurse
School Doctor
Social Worker
Psychologist
Psychiatrist

Other school staff members and personnel provide specialized skills essential to the success of the program.

THE BEST DISCIPLINE RESULTS WHEN ALL MEMBERS OF THE TEAM WORK TOGETHER

The PRINCIPAL member of the team

is the responsible administrative head of the school who has authority over teachers, pupils, and all employees in the school and

develops and maintains a wholesome climate of learning and discipline within the building.

The effective principal

organizes a coordinated master schedule which delineates the duties of all personnel.

develops with his staff school policies and codes for maintaining and improving building discipline.

develops sound lines of communication between the school and the community.

supports faculty members in disciplinary action.

utilizes student organizations, assembly programs, and conferences to maintain higher standards of behavior.

coordinates educational opportunities and activities to develop knowledge, understanding, and respect for the law.

cooperates fully with the police.

takes final responsibility for the effective functioning of the school team in maintaining discipline.

The TEACHER member of the team

is fully responsible for discipline in the classroom and

uses this authority wherever contacts are made with pupils.

The effective teacher

believes that orderly behavior is basic to learning.

arranges class seating to minimize the irritable behavior which frequently results from proximity.

considers other physical features of the classroom. For example: lighting; easy readability of blackboard writing.

sets up and maintains standards of conduct.

teaches the meaning of respect.

maintains desirable classroom routines.

provides adequate supervision of pupils.

is alert to situations which may cause trouble, and takes action before a problem develops.

informs the principal of potentially-serious behavior problems.

The PUPIL member of the team

sees disciplined behavior as essential *to* and *for* learning,

feels responsible for his own conduct and

does his part to maintain an orderly school.

The responsible pupil

attends school regularly and punctually.

comes to school neat, clean, and appropriately dressed.

knows, understands, and follows all rules and regulations of his school.

maintains a businesslike attitude toward school work.

realizes that conduct detrimental to the general welfare is not tolerated.

reports problems to the teacher or principal promptly and accurately.

reports facts to parents promptly and with accuracy.

The PARENT member of the team

prepares the child for entering school as a pupil and

exerts a continuing interest in the scholastic achievement and conduct of the child as he goes through school.

The responsible parent

provides for health needs, including adequate food, sleep and activity, and suitable clothing and shelter.

provides conditions for home study.

sends pupil to school regularly and on time.

forwards written excuse promptly for all absence and tardiness.

makes himself available to the school for conference or consultation when necessary.

cooperates in furnishing accurate information concerning the child when requested.

maintains standards of home behavior compatible with standards of school behavior.

effects appropriate punishment when indicated.

avoids setting unrealistic goals and demanding impossible achievement.

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
Presidential Building
415 - 12th Street, N. W.
Washington, D. C. 20004

Superintendent's Circular No. 99
November 4, 1970

POLICY STATEMENT OF BOARD OF EDUCATION ON SUSPENSIONS

All suspensions shall be made by the principal or in his absence by the acting principal.

Students should only be sent home during school hours when their behavior is considered to be detrimental and would prevent the orderly continuance of classroom procedures.

If the conduct of the pupil is such that it would seem wise to call the Police Department, the principal should first confer with the Assistant Superintendent concerned unless the safety of others is at stake.

Students under sixteen (16) years of age should not be sent home at any time until this action has been communicated to the parent. Elementary students should only be sent home in the company of the parent or authorized adult.

The principal or acting principal will notify the parent by telephone immediately of any suspension. This action is to be followed by a notice in writing to the parent and to the Ward Representative giving the reasons for suspension and the conditions under which re-admission may be made. This notice is to be delivered by whatever means are necessary to guarantee delivery on the date of suspension.

A consultation must be held on the day following suspension to allow the student an opportunity to state his case. At this meeting the following people must be present: The principal, the suspended student, the parents or guardian of the student and the person responsible for recommending suspension.

The principal will decide on the validity, length and terms of the suspension. If a student is suspended from school for more than one day, a hearing must be held by the fourth day.

A docket number shall be assigned to the case if the decision is for suspension.

Suspension of students for more than one day:

Notice to Central Office--The principal will notify the appropriate Assistant Superintendent of the suspension and of the pending hearing.

At this hearing the following people must also be present: The principal, the suspended student, the parents or guardian of the student and the person responsible for recommending suspension.

If a student's parents or guardian or responsible adult cannot appear for the hearing, the student is free to select his own adult representative.

Appeals from the decision by parent or guardian may be made to the appropriate Assistant Superintendent with final appeal to the Board of Education through its Committee on Student Activities.

The principal will advise the parent of this right and of his responsibility to forward such appeal. Such appeal will be made immediately by the parent or guardian through the principal.

A record must be kept of each case and submitted, upon request to the Board of Education, for review.

The Superintendent of Schools shall be notified in writing by the Assistant Superintendent of all suspensions.

Re-admission:

It is the principal's responsibility to communicate to the parents, at a reasonable time, the date and conditions of re-admission and to provide the follow-up necessary to insure prompt reinstatement of the student.

Adopted by the Board of Education
on May 10, 1969

POLICY STATEMENT CONCERNING DRESS OF PUPILS

The schools expect each responsible pupil to come to school neat, clean and appropriately dressed. (Board approved pamphlet "Improving Pupil Behavior")

Individual schools, with students, faculty and community involvement shall develop school codes of dress within the generally accepted standards of "neat, clean and appropriate" as outlined in the pamphlet "Improving Pupil Behavior" which has been approved by the Board of Education and from which Number 1 above is taken.

The schools, through the counselors, or school officials, will make every effort to secure suitable articles of clothing for any child in need, whose parents are not able to provide such items for him.

Only when the clothing of a child, including shoes, becomes offensive to others in terms of cleanliness or when it disrupts the instructional program in the school for other students because of its bizarre or immodest nature which stretches the idea of appropriateness to the breaking point, will remedial action be taken. Such action, initially, will involve an appropriate request by the principal to the pupil to correct the condition. If the pupil refuses, this becomes an undisciplined act on the part of the pupil and will lead to an immediate conference with the responsible adult as the first step in remedial action.

8. Colorado Springs

Colorado Springs Public Schools
Thomas B. Doherty, Superintendent

Recommendations for
Board of Education Policy
Relating to the School Attendance Law of 1963

he Board of Education of and for School District No. 11, El Paso County, Colorado, ursuant to its responsibility under the Colorado School Attendance Law of 1963 CRS 123-20-1 through 123-20-10) adopts the following definitions, policy, and rocedures.

Section B. Grounds for Suspension, Expulsion, and Denial of Admission (123-20-7, CRS 1963).

(1) (a) The following shall be grounds for suspension or expulsion of a child from a public school during a school year.

(b) Continued willful disobedience or open and persistent defiance of proper authority;

(c) Willful destruction, or defacing, of school property;

(d) Behavior which is inimicable to the welfare, safety, or morals of other pupils.

(2) (a) The following shall be grounds for expulsion from or denial of admission to a public school:

(b) Physical or mental disability such that the child cannot reasonably benefit from the programs available;

(c) Physical or mental disability or disease such as to cause the attendance of the child suffering therefrom to be inimicable to the welfare of other pupils.

(3) (a) The following shall constitute additional grounds for denial of admission to a public school:

(b) Graduation from the twelfth grade of any school;

(c) Failure to meet the requirements of age, by a child who has reached the age of six at a time after the beginning of the school year, as fixed by the board of education of the district in which the child applies for enrollment, as provided in section 123-21-15, C.R.S. 1963;

(d) Having been expelled during the same school year;

(e) Not being a resident of the district, unless otherwise entitled to attend under the provisions of article 29, chapter 123, C.R.S. 1963.

Section E: Miscellaneous Provisions

. . . .

13. No student shall be suspended or expelled for failure to participate in religious or patriotic activities conducted at or by the school. However, disruptive behavior in participation or nonparticipation may be cause for suspension.

14. No student shall be suspended or expelled for political or religious activities unless such activities are disruptive, violate an established regulation, or incite defiance of proper authority.

15. The following conduct or conditions, if occurring in a school or on school property, or if occurring while under the jurisdiction of the school or under circumstances where the operation, welfare, or decorum of the school are affected, may be causes for the suspension or expulsion of students, but such enumeration of conduct or conditions shall not be exclusive or deemed to be a limitation on the causes for suspension or expulsion of a student.

a. Continuing academic failure

b. Extortion

c. Fighting

d. Gambling

e. Hazing

f. Immoral conduct

g. Insubordination

h. Persistent or recurring disobedience or disorder

i. Physical abuse or intimidation of another student, or of school personnel

j. Poor personal hygiene

k. Possession, sale, distribution, or use of fireworks, firearms, or paraphernalia designed to inflict bodily harm

l. Possession, sale, distribution, or use of narcotics, drugs, or alcohol

m. Possession, sale, or distribution of obscene literature or objects

n. Smoking, including while a participant in a school activity in which classroom decorum is appropriate

o. Tardiness

p. Theft or pilfering

q. Truancy

r. Vulgar and profane language

s. Defacing, damaging, or destroying of property

Colorado Springs, cont.

SAINT LOUIS UNIVERSITY

NATIONAL JUVENILE LAW CENTER
A CENTER FOR YOUTH RIGHTS
AND JUVENILE LAW REFORM

SCHOOL OF LAW
3642 LINDELL BOULEVARD
SAINT LOUIS, MISSOURI 63108
PHONE: 314-533-8868

April 1, 1971

Miss Patricia Lines
Harvard University Center for Law and Education
38 Kirkland Street
Cambridge, Massachusetts 02138

Dear Miss Lines:

Ralph Faust of this office has indicated your interest in some of the problems I encountered in negotiating a suspension and expulsion code for Colorado Springs. Briefly, there are several problems I faced that would come up in most jurisdictions.

1. A model code adjusted to state law frameworks (if any) should be prepared before initial discussions with the school authorities begin. I did not do this and as a result got involved in a race with the board's attorney in the preparation of a code.

2. Relevant organizations should be contacted for support before initial submission to the school board. Organizations such as WRO, student groups (if any), etc. can be helpful merely by supporting the adoption of the code. The attendance of public meetings by such groups can also be helpful. Teachers' unions can exert a powerful influence on boards if you can show them a uniform code will operate to their benefit. Analogizing student rights to teachers' rights can be valuable.

3. Publicity in local papers and speaking at group meetings may also place subtle pressure on the board. Emphasizing the arbitrariness of school discipline and its contribution to dropout rates makes an interesting speech to middle class persons.

Colorado Springs, cont.

Miss Lines, April 1, 1971, page two.

4. Contacting individual principals and offering to discuss the proposed code may cut some opposition. I sent an offer to each principal to discuss the code with him and his staff. I received few acceptances but the meetings did result in some lessening of opposition.

5. A program of school litigation should be pursued during negotiations. Those cases brought should be more carefully selected so that bargaining points will not be lost. It is helpful to point out that all of this unpleasant litigation could have been avoided if the proposed code had been in effect.

6. Legal opposition from the board's attorney can be cut by the submission of cases supporting the general propositions of the code. I found this device to be valuable in cutting any supposed legal objections. Submission to the juvenile court judge may also have the same effect. In some cases the juvenile probation department may wish to support the code to cut the expulsions they have to deal with as delinquent offenders.

7. Some boards are willing to adopt procedural safeguards that will not adopt substantive codes. In such cases (as was mine) I suggest you get what you can and litigate the rest as they arise.

8. A definition section can be a substantial tool for a lawyer. A carefully drawn definition section can include or exclude items of concern that cannot be solved in direct terms because they are unacceptable to the board. In large measure such a section can determine the coverage and effect of the code.

Finally, the packet you are preparing will be of great value to L.S. attorneys. When I did my initial preparation of a code I would have been overjoyed to have had assistance like this. As it was I just read the cases and sent for codes already in effect in other cities. The packet will be a valuable tool.

Sincerely,

Joe A Cannon

Joe A. Cannon
Associate Director

IV. Examples of Official Codes

B. State-wide Policy Statements

State of Washington
SUPERINTENDENT OF PUBLIC INSTRUCTION
Olympia

March 16, 1970

BULLETIN NO. 39-70

TO: School District Superintendents, Chairmen of Boards of Directors, Secondary School Principals, Counselors, and Intermediate School District Superintendents

FROM: Louis Bruno, State Superintendent of Public Instruction

RE: Guidelines to School Districts relating to Student-Board Rights and Responsibilities

Pursuant to a recent United States Supreme Court decision [*Tinker v. Des Moines Community School Dist.*, 393 U.S. 503 (1969)], the State Board of Education has promulgated the enclosed guidelines for basic assistance to local school districts in formulating local regulations which relate to student-board rights and responsibilities.

The State Board expressly recommends that these guidelines be utilized in giving substance and effect to those rules of local districts which provide for student dismissal from Washington public schools. It should be noted that: (1) the guidelines were developed by the Board after careful legal research and study by the office of the State Attorney General; (2) the guidelines represent the *legal minimum* which is to be required of school authorities in giving effect to student dismissal from a public school.

With student unrest, insecurity and protest invading public secondary schools, serious situations will occur from time to time which will test the legality of school rules to the utmost. In such a circumstance, local rules must comply with legal realities. Our public schools can do much to enhance the education of young people by providing a learning environment in which the rights and responsibilities of both school authorities and students are precisely understood and clearly documented. In this endeavor as the guidelines suggest, input from students, their parents and their teachers will be of significant and lasting value.

Llewellyn O. Griffith
Consultant
Administrative Services

LOG:nst
Enc.
cc: Private School Administrators

GUIDELINES TO SCHOOL DISTRICTS RELATING TO STUDENT-BOARD RIGHTS AND RESPONSIBILITIES

Adopted by the State Board of Education
March 5, 1970

INTRODUCTION

The fundamental purpose of the school is to provide educational opportunities for children and youth. If this purpose is to be achieved effectively, a satisfactory learning environment must be established and maintained. By statute the local school board is authorized to establish, subject to statutory limitations and to rules and regulations of the State Board of Education and the Superintendent of Public Instruction, those rules of conduct essential to the achievement of the purposes of education.

At the same time, children and youth, by statute and by constitutional grant, have certain individual rights and privileges which must be preserved.

One basic purpose of education, since the establishment of our public school system, has been to develop an understanding and an appreciation of our representative form of government, the rights and responsibilities of the individual, and the legal processes whereby necessary changes are brought about. To achieve this purpose it is incumbent upon school districts to observe the fundamental concepts of due process in establishing local rules and regulations governing the conduct of the school.

SCHOOL RULES

Schools are statutorily authorized to make reasonable rules. Whether a given rule is reasonable is a legal conclusion which cannot always be accurately predicted. As a generality, suffice it to say that a rule is reasonable if it utilizes a reasonable means of accomplishing a legitimate school purpose. The promulgation of written school rules may minimize potential friction between administration, teachers, parents, and students. Input from all of these sources is valuable; and, as the breadth of the input increases so does the likelihood that a court will find the end products of the process to be reasonable.

This presentation will offer suggestions of a nonlegal nature descriptive of a sensible exercise of the rule-making power. The first step in this process is the recognition by school authorities of their statutory rule-making power. Most importantly, they must exercise this power in a sensible manner, which really means that they promulgate written rules in a manner which is externally recognizable as just and wise. As noted above, input from all segments of the community is legally prudent and educationally sound. In addition, a final written set of rules should be made available to all concerned parties.

As a cautionary note it should be observed that there are some types of conduct which are very sensitive to regulation by school rules. This is activity which comes within the protection of the First Amendment to the United States Constitution. The prohibitions contained within that amendment are applied to the states through the Fourteenth Amendment. Generally, the First and Fourteenth Amendments then prohibit states from unduly infringing upon the rights of speech and expression held by the people.

In the school setting, this restriction on state action limits the manner and extent to which school rules may limit the speech and expression of students. The United States Supreme Court in March of 1969 declared that First Amendment rights of students could not be regulated unless the school authorities could show that the failure to regulate would create a material and substantial disruption of school work and discipline [Tinker v. Des Moines Community School Dist., 393 U.S. 503 (1969)]. Thus, schools should undertake to develop creative ways of providing time and space for student expression without materially and substantially disrupting the work of the school.

APPROPRIATE PROCEDURE

The Fourteenth Amendment to the United States Constitution requires that no state shall deprive any person due process of law. The elements of due procedural process which must be present in a school dismissal are: (1) notice of the charges, and (2) an opportunity for a fair hearing before dismissal.

Notice should be in writing. If the student is accused of breaking a written school rule, that rule should be stated in the notice. If no particular written school rule was broken, a detailed articulation of the school policy which was offended should be included in the notice. In addition, the student's notice should contain a brief description of the alleged conduct which necessitated the initiation of disciplinary procedures. This notice should be delivered to the student a sufficient length of time before the hearing to allow the student to respond intelligently to the charges.

Fourteenth Amendment due process requires that school officials observe the rudiments of fair play when conducting dismissal hearings. The exact elements of fair play will vary with the circumstances. However, in almost all hearings, at least the following should be observed:

(1) The student should be given an opportunity to give his version of the facts and their implications. He should be allowed to offer the testimony of other witnesses and other evidence.

(2) The student should be allowed to observe all evidence offered against him. In addition, he should be allowed to question any witness.

(3) The hearing should be conducted by an impartial hearing individual or board -- not one involved in the alleged infraction or one biased prior to the hearing.

(4) The hearing authority shall make his determinations solely upon the evidence presented at the hearing.

(5) The hearing authority shall state within a reasonable time after the hearing his finding as to whether or not the student charged is guilty of the conduct charged and his recommendation as to the disposition, if any, of the disciplinary action.

(6) If the hearing authority recommends dismissal of the student, the student may request review of his case by the board of directors. If a complete record of the hearing was kept, the board may review his case on that record. If a complete record was not kept, the board of directors should give the student a second hearing to decide if the hearing authority's recommendation should be followed.

(7) Either side should have the right to keep a record of any hearing at its own expense.

(8) At the time of informing a student of his dismissal from school, the administration must advise him of his right to a fair hearing and the schedule of time to be observed by the accused in making his request for hearing. This time schedule should be adopted as a board rule and be available to the student in written form. Failure of the student to timely request a fair hearing shall relieve the school board and administration of the necessity of providing a hearing.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION
STATE AGENCY FOR
ELEMENTARY & SECONDARY EDUCATION
ROGER WILLIAMS BUILDING
HAYES STREET, PROVIDENCE, R.I. 02908

POLICY STATEMENT
on
STUDENTS' RIGHTS

It is true of our era that the element in society that is probably most sensitive to the need for and the beauty of justice is its youth. This especially appears to be the case in our Nation, which was built on the concept of justice for all.

To acknowledge that in every society there exists some degree of discrepancy between "creed and deed" is not to say that the ideals of a particular society are lacking either in moral validity on the theoretical level or in practical efficacy with respect to their impact on the collective life of that society. Nor should such an acknowledgement be construed to excuse such discrepancies as do exist. Rather it should be interpreted as a humbling yet exhilarating challenge to that society to renew its fundamental commitments in the moral order and to strengthen its resolve to fulfill those commitments. And there are no places in which it would be more fitting to begin meeting that challenge in earnest than those institutions which are dedicated both to inculcating a reverence for the stated goals of the society in the hearts and minds of its young and to meeting the needs of those very persons who seem to hunger the most for a setting in order of society's house. Those institutions, of course, are the schools, and those persons are students.

Every school constitutes a community in miniature, and each of those communities should -- and very well could -- serve as a model of advanced civilization, whose sinews are comprised of honest, open, respectful and equitable interpersonal relationships between and among citizens of all the types represented in the population.

It is the Board's purpose in promulgating this statement to call special attention to a subject that until very recently has been almost entirely neglected. Such focusing should in no way be interpreted as an implication that the subject of students' responsibilities -- which matter, of course, is an insistent and inevitable companion to that of students' rights, has diminished in importance. Nothing could possibly be further from the truth. Indeed, the question of students' responsibilities, viewed in the light of its long ignored sister subject, now takes on heightened meaning. At this point and in this document, however, and in view of adequate past emphasis on the responsibilities of students, it should suffice to reaffirm that every student has a responsibility to act always in such a way that he does not abrograte the rights of any of his fellow students or of any school authority; further, every student has a responsibility to use his own abilities and talents to gain optimum learning benefits from the considerable opportunities which the obervance of his rights by others guarantees him.

In accordance with these beliefs--and recognizing the legal rights of local school committees, parents, teachers and other citizens--the State Board of Education strongly urges all school authorities in Rhode Island to adopt practices and procedures which recognize the following principles:

- AS AN INTELLECTUAL BEING, EVERY STUDENT HAS A RIGHT TO SEARCH VIGOROUSLY FOR TRUTH BY EXAMINING OPPOSING IDEAS, AND TO ESPOUSE AND EXPRESS IN ANY ORDERLY MANNER WHATEVER VIEWS COMMAND THE ASSENT OF HIS MIND. WHERE THE SOUNDNESS OF HIS POSITION CAN NEITHER BE PROVEN NOR DISPROVEN WITH HARD DOCUMENTATION, HE SHOULD IN NO WAY BE PENALIZED ACADEMICALLY FOR HOLDING THOSE VIEWS. AND IN NO CASE SHOULD HE BE SUBJECTED TO DISCIPLINARY ACTION FOR COMMITTING WHAT MIGHT APPEAR TO SOME -- AND WHAT MIGHT INDEED BE -- AN INTELLECTUAL ERROR.

- AS A PERSON WITH HUMAN DIGNITY, EVERY STUDENT HAS A RIGHT ALWAYS AND IN ALL CIRCUMSTANCES TO BE TREATED WITH RESPECT AND COURTESY AND NEVER UNDER ANY CIRCUMSTANCES TO BE RIDICULED.

- AS AN INDIVIDUAL ENTITLED TO SOME INSULARITY, EVERY STUDENT HAS A RIGHT TO PRIVACY WITH RESPECT TO MATTERS OF PURELY OR PREDOMINANTLY PERSONAL CONCERN TO HIM SUBJECT, OF COURSE, TO SUCH LEGITIMATE LIMITATIONS AS ARE REQUIRED TO PROTECT ANY SUPERSEDING RIGHTS OF OTHERS AND OF THE INDIVIDUAL STUDENT HIMSELF.

- AS A CITIZEN LIVING IN A SOCIETY OF JUSTICE AND ORDER, EVERY STUDENT HAS A RIGHT NOT TO BE DISCIPLINED IN ANY SUBSTANTIAL MANNER EXCEPT UNDER CONDITIONS THAT CONFORM TO REASONABLE STANDARDS OF DUE PROCESS.

- AS A MEMBER OF AN INSTITUTION COMMITTED TO DEMOCRACY AS A WAY OF LIFE, EVERY STUDENT HAS A RIGHT TO PARTICIPATE, TO A DEGREE CONSISTENT WITH LAW AND WITH THE LEVEL OF MATURITY CHARACTERISTIC OF HIS AGE, IN THE MAKING OF DECISIONS THAT AFFECT THE CORPORATE LIFE OF THE COMMUNITY EXISTING WITHIN THAT INSTITUTION.

- AS AN INDIVIDUAL WITH FREEDOM TO ADOPT AND EXPRESS UNIQUE TASTES, EVERY STUDENT HAS A RIGHT TO CHOOSE HIS OWN MANNER OF DRESS AND OTHERWISE TO ARRANGE HIS PERSONAL APPEARANCE UNDER NO RESTRICTION (OTHER THAN THOSE DICTATED BY CONSIDERATIONS OF HEALTH AND SAFETY) THAT DOES NOT BY LAW APPLY TO ADULT CITIZENS IN THE LARGER COMMUNITY.

- AS THE PRINCIPAL CONSUMER OF THE EDUCATIONAL SERVICES WHICH THE SCHOOL EXISTS TO PROVIDE, EVERY STUDENT HAS A RIGHT TO EVALUATE THE QUALITY AND RANGE OF THOSE SERVICES AND THE MANNER IN WHICH THEY ARE DELIVERED, AND TO HAVE HIS APPRAISAL GIVEN SERIOUS CONSIDERATION BY THOSE RESPONSIBLE FOR PROVIDING SUCH SERVICES.

- AS A PERSON WITH A UNIQUE SET OF POTENTIALITIES TO BE ACTUALIZED, AND AS A FREE HUMAN BEING RESPONSIBLE FOR CARVING OUT HIS OWN DESTINY, EVERY STUDENT HAS A RIGHT TO PARTICIPATE TO A SUBSTANTIAL DEGREE IN THE SHAPING OF HIS OWN EDUCATIONAL PROGRAM.

- AS A MEMBER OF A DEMOCRATIC SOCIETY, EVERY STUDENT HAS A RIGHT, INDIVIDUALLY OR IN CONCERT WITH HIS FELLOWS, TO PETITION IN AN ORDERLY MANNER FOR THE REDRESS OF GRIEVANCES.

So that all concerned will have full and clear knowledge of the limits within which they will be required to operate, it is suggested that local school authorities publish and distribute in convenient form to all parents, students, teachers and administrators all rules and regulations that are in force with respect to student behavior, as well as all procedures that have been established to enforce such rules and regulations and to safeguard the rights of those to whom they apply.

Adopted by the
State Board of Education
June 11, 1970

Massachusetts Department of Education, Youth Advisory Council

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Guildelines for Student Rights and Responsibilities (1971)

WHAT IT'S ALL ABOUT

Schools are for students. Schools reflect the educational philosophy of the community served. Parents, school staff, and students are in pursuit of a common goal, a program preparing the participants for full, active, responsible participation in the community throughout their lives.

Such a program implies an appreciation for what has preceded us, an understanding of who and where we are, and the opportunity to exercise our rights and assume our responsibilities in participating in the determination of the community's direction.

Such a program promotes individual freedom, responsibility, and productive citizenship, as well as recognizes the rights and the standards of the community.

Such a program protects an individual through limitations upon the rights of others by living up to the guarantees of the U.S. Constitution and the laws of the Commonwealth.

Personal or public irresponsibility, anarchy, or violence have no place in American democracy; neither do the extremes of regimentation and authoritarianism. The street can never be the alternative for the healthy productive development of citizens; schools cannot tolerate conditions that drive students into the streets.

This statement provides guidelines to aid local communities develop school-student, community-citizen relationships that hopefully will nuture balance between individual human beings, and their institutions.

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HERE IT IS

1. School committees are legally responsible for the establishment of school policy, and every effort should be extended to include in the formulation of school policy consideration for the developing maturity of the student. Concomitant responsibilities flow from the exercise of rights and privileges. Tantamount among these are: 1) respect for ones self; 2) respect for others and their rights; 3) respect for individual dignity; 4) respect for legally constituted authority and the legal responsibility of those in authority.

2. All rules and regulations to maintain the process of education must be common knowledge. Orientation programs and free student handbooks should provide this information in clear and understandable language. Any changes should be widely publicized in print in both school and community media, and no regulation should be summarily drafted and enforced.

3. School Committees, professional staff, and Student Governments should work cooperatively within the limitations prescribed by law in the establishment of these regulations. The amending, appeal, and student referenda and recall processes for the establishment and enforcement of these rules should be clearly defined and made available to all interested and affected parties.

4. Students must be free to establish and should be encouraged to participate in student governments that provide all students, through a representative system, a voice in school affairs. All registered students should be eligible to hold office.

5. Schools are for students and students should be involved in the educational process in their schools. Professional staff should solicit student suggestions and recommendations concerning curricular offerings. Curriculum committees in local schools should include students in their membership. Curriculum offerings in local schools should meet the needs and interests of all students.

6. A committee of students and professional staff should be formed to plan and organize school assembly programs. Suggestions from non-committee members should also be encouraged and considered. Such assemblies are an important part of the total instructional program and topics or speakers of contemporary interest to students should be encouraged whenever possible. In the cases of controversial topics or speakers, presentations should be balanced in terms of existing major points of view.

7. Freedom of speech is guaranteed to all citizens, and students must be allowed to exercise their constitutionally protected rights of free speech, petition, and assembly as long as they do not interfere with the educational process.

    a. Materials presented to students should be relevant to the course and appropriate to the maturity level and intellectual ability of the students. Students should have the opportunity to investigate different views related to topics and materials introduced or presented. Teachers should, at all times, strive to promote tolerance for the views and opinions of others and for the rights of individuals to form and hold differing views and opinions. The teacher should further be responsible to permit the expression of the views and opinions of others and to encourage students to examine, analyze, evaluate, and synthesize all available information about such topics and materials.

    b. School newspapers, yearbooks, literary magazines, and other publications should be guaranteed the right of freedom of the press, subject to the existing laws of libel and obscenity. As learning experiences within the school, the staff should have qualified advisors and should seek the highest publication standards. Other non-school sponsored student publications should be subjected to locally determined procedures for distribution on school premises.

8. The activities of students other than at school functions, carried on entirely outside of normal hours and off school premises, should not be the responsibility of the school and no student should be penalized because of such outside activities.

9. Students should be allowed the use of school facilities for extracurricular activities and should be encouraged to participate in these, including clubs, recreational events, and other such related activities. These activities must be scheduled in keeping with normal school committee regulations and provide for supervision according to school rules.

10. Students have a right to an education and to the equality of educational opportunity. Disciplinary measures that deprive him of this right should be utilized only in extreme cases. Disciplinary actions of administrators and teachers should be fair and consistent in all cases and resorted to only when the student, by his conduct, reveals his inability to recognize the rights of others. Suspension should be considered only prior to notification of parents or guardian and a definite period of time should be stated. A parent conference should be held as soon as possible. Students should have the opportunity to make up work missed during this period and provisions for striking the suspension from the record, if later proved unwarranted, should be established.

11. Upon termination or graduation from school, every student should have the right to review his school records. Only academic and attendance information on record should be released to requesting agencies and institutions by the school and only with the approval of the student and/or his parents.

12. Local schools should establish a clearly defined procedure for the consideration of student problems and the processing of student complaints. This procedure should be developed cooperatively between the students and professional staff and students should be guaranteed the right of Due Process.

* * * * *

The Board of Education of the Commonwealth of Massachusetts encourages each community to seriously consider guidelines as expressed above and, wherever appropriate, to effect necessary changes. The effective implementation and development of a climate for learning requires the exercise of good faith on the part of students, parents, and school personnel, and a basic respect for the worth of each individual and his ability to contribute to his community.

IT'S UP TO YOU

I. The School Committee of each city, town or region should convene a committee for ad hoc local development. The membership of this committee should adequately represent students, parents, teachers, administration, school committee and citizenry.

II. This Committee should identify existing school policies in the following areas:

1) School governance

- **a) student government process**
- **b) administrative rules and regulations**
- **c) applicable local ordinances**

2) Curriculum development

- **a) program of studies**
- **b) curriculum committee(s)**
- **c) procedures for revision**

3) Extra-curricula activities

- **a) membership and advisors**
- **b) scheduling**
- **c) programs**

4) Utilization of existing school plant

- **a) availability**
- **b) adult supervision**
- **c) appropriate program facilities**

III. The Committee should correlate their findings with the adopted guidelines, propose ways and means for local implementation, wherever needed, and present its recommendations to the local School Committee for adoption or modification.

IV. File on November 15, 1971, a report with the Chairman of the local School Committee, and the Massachusetts Department of Education indicating what the Committee has accomplished:

This report should include:

- **a) the committee objectives**
- **b) its composition and membership**
- **c) a report of its meetings, or sub-committee meetings**
- **d) the recommendations**
- **e) recommendations adopted by the Local School Committee**

WE DID IT!

The student rights and responsibilities effort originated last spring simultaneous to the disturbances which occurred in several Massachusetts High Schools. Upon the initiative of Commissioner Sullivan, the Youth Advisory Council began to attack the problem. We have been working on the project since then. In order to keep this a cooperative effort, we formed a Task Force of students and adults who have contributed to a draft of the Student Rights and Responsibilities.

The Youth Advisory Council decided to form a subcommittee for this effort and worked on it through the summer, into the fall up to Wednesday, December 29th. On this day, members of the Youth Advisory Council subcommittee aided by Rene J. Bouchard, Jr., Director of the Bureau of Civic Education, and Miss Helen Smith of the Department of Education's Legal Counsel, drew up our first working draft. This draft was then sent out to the original Task Force members for their reaction and suggestions.

At the request of the Commissioner of Education, we met as a student-adult Task Force on Monday, January 18 at the Department of Education. Representation included adults and professionals from the Department of Education, Massachusetts Association of School Committees, Massachusetts Association of School Superintendents, Secondary School Principals' Association, Junior High School Principals' Association, Elementary School Principals' Association, Massachusetts Teachers Association, American Federation of Teachers, and the Massachusetts Congress of Parents and Teachers. Prior to the joint meeting on Monday, several of the above mentioned groups met to respond to our document. The meeting was very encouraging and helpful. The general atmosphere from all groups indicated an acceptance of the Youth Advisory Council's work.

From here, the document was taken to the Youth Advisory Council's monthly meeting held at Wellesley High School on Wednesday, January 20. Here, together with Commissioner Sullivan, the Youth Advisory Council reviewed the draft and incorporated into it the suggestions made by the various groups at Monday's meeting. I'd like to stress that this document is a cumulative, cooperative effort.

Thomas O'Brien
Y.A.C. Representative to the State
Board of Education
Southbridge, Massachusetts

Students win OK on rights

The state Board of Education today endorsed "in principle" a statement on student rights and responsibilities drawn up ty its Youth Advisory Council.

The board took the action after a lengthy debate on the exact degree to which it should endorse the statement.

Several board members questioned whether the board should appear to be giving its complete support to a document which contained some parts that individual board members questioned.

Meeting in front of a room crowded with about 50 students representing high schools throughout the state, the board finally decided to "accept and endorse in principle" the student's ideas and to send the guidelines out to local communities, where they are to be used as a basis for discussion.

The board made it clear that it was not mandating these guidelines and that it might at a later date make a policy statement of its own.

State Education Comr. Neil Sullivan urged the board to go along with the student-drafted guidelines, saying they are "urgently needed."

Two guidelines whigh board members particularly questioned related to student activities outside of school and to the confidentiality of student records.

One guideline said students should not be penalized for activities outside school hours and off school premises.

The other said that only academic and attendance records should be released after a student graduates from high school, and then only with his or her parents' approval.

Several board members questioned whether or not this would hurt students in applying for college admission because colleges frequently want information beyond academic records.

One board member suggested that he would not hire a student who refused to let him see high school records.

The chairman of the Youth Advisory Council, Thomas O'Brien of Southbridge, explained that the guideline was an attempt to protect students' privacy and to keep outside sources from records that might damage a student's career.

(Herald Traveler Staff Photo by Ulrike Welsch)

AT HEARING on proposed High School Students Bill of Rights yesterday members of the state Board of Education heard students ask for more control of their education. Mrs. Rae Kipp of Lexington, makes a point during hearing.

Student Rights Code OKd

By MURIEL COHEN

A bill of rights giving high school students some control over their own education was approved yesterday by the state Board of Education.

The code,. designed as a guideline for local school committees, calls for student involvement in curriculum, equal educational opportunity for all students and specific procedures for dealing with problems and complaints.

While the new student rights measure is not mandatory, the Board of Education has proposed that local school committees establish ad hoc committees to report by Nov. 15, 1971 on possible implementation of the recommendations.

THE 12-POINT document was drawn up by a subcommittee of the state's new Youth Advisory Council and a task force of adults representing principals, superintendents, teachers, school committees and parents.

After quibbling over wording of some of the statements, the board endorsed the rights proposals before an audience that included 60 students from schools across the state.

AMONG THE RECOMMENDATIONS:

- Professional staff should solicit student suggestions and recommendations concerning curriculum and curriculum committees should include students.
- Students must be allowed to exercise their constitutionally protected rights of free speech, petition and assembly as long as they do not interfere with the educational process."
- School newspapers and other student publications must be guaranteed the right of freedom of the press subject to the existing laws of libel and obscenity.
- Student activities outside of school hours and school premises should not be the responsibility of the school nor should any student be penalized for such participation.
- Students should be encouraged to use school facilities for extracurricular activities.
- Disciplinary measures which deprive students of the right to an education should be used only in extreme cases.
- Schools should establish clearly defined procedures for dealing with student complaints and problems.
- Students should be provided with free handbooks specifying rules and regulations established with the help of school committee, professional staff and students.

YESTERDAY'S vote calls on local school committees to identify school policies in school governance, curriculum development, extra-curricular activities and use of school plant in relation to student rights, and to propose ways of complying with the new codification.

The board yesterday elected Mrs. Rae C. Kipp as chairman. She is the first woman to hold that post in the board's history.

BOSTON HERALD TRAVELER, FRIDAY, FEBRUARY 26, 1971 B 5

Excerpts from New York State Education Law, § 3214 (6)(b) - (e)

b. The board of education, board of trustees, or sole trustee may adopt by-laws delegating to the principal of the district, or the principal of the school where the pupil attends, the power to suspend a minor for a period not to exceed five school days.

c. No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right to representation by counsel, with the right to question witnesses against such pupil. Such hearing shall be held before the superintendent of schools if the suspension was ordered by him. An appeal to the board of education shall lie from his decision upon such hearing. If the suspension shall have been ordered by the board of education, such hearing shall be before such board.

d. In the case of a suspension by the principal pursuant to paragraph b of this subdivision, the pupil and the person in parental relation to him shall, on request, be given an opportunity for an informal conference with the principal at which the person in parental relation shall be authorized to ask questions of complaining witnesses.

e. Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so.

V. Models Prepared by Students or Lawyers

A. As Amendments to Existing Codes

MEMORANDUM

TO: The Board of Education of the Oakland Unified School District

FROM: The Oakland Lawyers' Committee Project

DATE: September 23, 1969

RE: RECOMMENDED REVISION OF "TENTATIVE ADMINISTRATIVE BULLETIN 25, STUDENT DISCIPLINE AND CONTROL POLICIES" (ATTACHED)

On June 17, 1969, the Superintendent of Schools submitted to the Oakland Board of Education a document entitled "Tentative Administrative Bulletin 25, Student Discipline and Control Policies (TAB 25). It is understood that TAB 25 was developed by the Superintendent's staff in cooperation with the Negotiating Council representing the teaching staff.

At the request of the Oakland Lawyers' Committee Project, the Oakland Board of Education postponed its consideration of TAB 25 until September 30, 1969 to give the Lawyers Committee time to study it and involve other organizations in making recommendations.

During the course of its consideration of the subjects included in TAB 25, Lawyers Committee members, associates, and staff have engaged in extensive research, with emphasis on the civil rights of students, the legal responsibilities of school personnel to students and parents, procedural due process in suspension and expulsion proceedings, and other issues. In addition, the Committee has solicited the viewpoints and suggestions of a great many other organizations and individuals. This process has included two open meetings, extensive correspondence, and a great many private conferences. The Committee also has made a comparative analysis of discipline policies and procedures in effect in many urban school districts throughout the United States.

In developing the attached revision of TAB 25, the Committee has added provisions to reflect the fact that students do have constitutional rights and that it is possible to place reasonable limitations on police activities in the Oakland Public Schools. In general, the Lawyers' Committee has tried to suggest ways in which "control" may become a by-product rather than a primary goal of the discipline policy. These include suggestions for improving communications with parents and for meaningful participation both by students and parents in the formulation and implementation of the policies and procedures.

Along the way, the Lawyers' Committee also has suggested certain simplifications of language, standardization of terms and overall reorganization which make the document easier to read and understand and, perhaps, friendlier.

The following comments may assist in inderstanding the nature and basis for the more extensive changes.

General

The document has been shortened wherever possible. The Lawyers' Committee has added provisions, where appropriate, to insure that communications with parents who do not understand English will be in the language they understand.

Wherever possible, emphasis has been placed upon fostering an atmosphere conducive to learning, i.e., that the uninterrupted operation of each school as an educational institution is of uppermost importance. We have taken pains to stress that this goal should be placed ahead of such things as, e.g., police investigations of matters unrelated to school attendance (see p. 14).

TAB 25 includes extensive verbatim quotations from the Education and Penal Codes. The Lawyers' Committee believes that it is unnecessary and undesirable to use the rather stilted and threatening language of the statutes. The matter of the severity of punishment for violations of the criminal law certainly is a concern of the Courts and the Probation Department, but not of the Oakland Public Schools. Accordingly, the statutory material has been paraphrased. To the extent that the exact language of the statutes seemed to be potentially useful to those who will be using the document, it has been included, verbatim, in the Appendix.

School-Site Discipline Committee (pp. 4-6,7, 8)

Section "B", beginning at the bottom of page 4, dealing with the composition and responsibilities of the School-Site Discipline

Committee, contains the first major innovation introduced by the Lawyers' Committee. TAB 25 provided for the development of School-Site Discipline policy by "the Faculty Advisory Committee or a separate school discipline committee" (presumably limited to members of the certificated staff). No provision was made for participation either by students or parents.

While we believe that final responsibility for decisions respecting questions of discipline and student conduct must rest with the school staff, we also are convinced that parent and student involvement, at least in the formulation of school policies and procedures, should not be viewed as any form of "interference" with school administration. Instead, such participation should be tried out, if only on an experimental basis, as a means by which the community may become involved in a meaningful way in the affairs of the school.

Subparagraph "f" on page 5 was added to pave the way for some form of student self-government in discipline matters. No attempt was made to spell out the details as this would necessarily depend upon factors peculiar to each school.

Neither was an attempt made to spell out the exact composition and number of members of the School-Site Discipline Committee (see top of p. 5). This would be worked out by the principal. At some schools it is probable that the parent representative would be elected by the Parent-Teachers Association. At other schools the School Community Council might make the designation. It would also be possible to include designees from more than one parent organization.

The Lawyers Committee recognizes the potential difficulties inherent in involvement of elementary school students in the matters with which the School-Site Discipline Committee will be concerned. In the case of elementary schools it may, therefore, be desirable to limit membership to sixth graders. The handbook on student conduct, to which reference is made at the top of page 6, probably should be distributed to students as well as the staff and also should be available to interested parents.

The Lawyers Committee has attempted to make it clear that the responsibility of the School-Site Discipline Committee is limited to the development and review of policies and procedures and that it has no responsibility or authority with respect to day-to-day implementation. In other words, the School-Site Discipline Committee would not be looking over the shoulder of the school staff with a view to approving or disapproving particular decisions. In this connection, it should be noted that student application to the School-Site Discipline Committee for review of the question whether, in the future, school authority should be exercised differently (see p. 8 under "Responsibilities of Students"), is not meant to be an "appeal" in the sense that the School-Site Discipline Committee could influence a decision already made. The intention is simply to give students and parents a reasonable avenue to resolve any doubts about the appropriateness of a particular rule or regulation.

To insure maximum participation by all parents as well as the best possible understanding of district-wide and School-Site Discipline policies and procedures, the Lawyers' Committee has suggested, (at page 7 under "F. Securing Parent and Community Support... etc."), the mailing by each school of a notice in English and Spanish to the parents of the children who attend it, inviting them to participate in the designation of the parent representatives to the School-Site Discipline Committee. We do not believe that it is enough simply to leave this notification in the hands of the parent organizations themselves. We believe that this small contribution by the District of clerical and mailing expenses will produce benefits of immeasurable value in terms of improved school-community relations.

Corporal Punishment (p. 10)

The subject of corporal punishment was included in TAB 25 between the subjects of suspension and referral of serious discipline cases to the Central Review Board. We have suggested the relocation of that section to page 10, following "Responsibilities of Principals." We feel that this location is appropriate because the responsibility for corporal punishment lies with the principal or his designee. Also, because corporal punishment, if it is administered at all, is to be administered only to male elementary and junior high school students, who probably are somewhat less likely to be involved in suspension and expulsion proceeding. Finally, because corporal punishment normally would be an alternative to suspension or expulsion.

The Lawyers' Committee has elected to take no position on the question whether corporal punishment should be eliminated altogether. The Lawyers' Committee has suggested only that such punishment should not be administered unless its administration has been expressly authorized by the child's parents at the beginning of the school year.

Emergency Dismissal Plan (pp. 12-13)

The "Emergency Dismissal Plan" contained in TAB 25 made no provision for the notification of the parents of dismissed children. The Lawyers' Committee has added such a provision. The Lawyers' Committee recognizes the practical difficulties inherent in the administration of such a procedure, but believes that the school, in cooperation with parent groups, should address itself to the problem and develop a notification plan for each school.

Return to School and Reenrollment Following Disorder (p. 14)

TAB 25 provides the following procedures when school is reopened following a disorder. Students may return to their classes immediately, with the exception of those illegally absent during the disorder, or involved in the disorder. These students would automatically be suspended, and required to return with their parents to reenroll.

First, it appeared to the Lawyers' Committee that automatic suspension for any "illegal absence" coinciding with a disorder is excessively harsh. A student might be absent, but have no connection with the disorder. If, as seems likely, the authors of TAB 25 were concerned with illegal absences related to the disorder, it should suffice to define such an absence as "participation" in the disorder. Accordingly, the Lawyers' Committee eliminated category "a".

Secondly, the words "identified as" seemed to need more focus where action as severe as suspension is involved. For this purpose, the Lawyers' Committee has suggested that the student be "identified in a written report of school personnel or police officers" (p. 14). This addition will serve to prevent suspensions based upon the anonymous charges which abound in such situations.

Third, there seemed to be no reason why disorder-related suspensions should be treated in any special way, i.e., distinct from suspensions for other reasons. Accordingly, the Lawyers' Committee has suggested that established conference or hearing procedures be followed.

Finally, while it is desirable that parents are aware of the problem, it did not seem to the Lawyers' Committee that the School District has a legal right to require a parent to accompany his child to school to "reenroll." If the child is interested in returning to school and behaving himself, he should not be penalized because he has uncooperative parents. The Lawyers Committee, therefore, includes only a provision that "the parent will be requested to come."

It should be noted that mixing the terms "reenrollment" and "suspension" may be unwise, unless "reenrollment" is to become an integral part of the procedure for terminating all suspensions and expulsions.

Cooperation with the Oakland Police Department and Other Law Enforcement Agencies (pp. 14-15)

The Lawyers Committee is in no way opposed to the proposition that the staff of the Oakland Unified School District and all other responsible citizens should cooperate with the Oakland Police Department and other law enforcement agencies. The Committee's concern in this area has been with the need to weigh the desirability of unrestricted "cooperation" against its impact upon Oakland Public Schools as educational institutions, and upon its staff as concerned professionals who often are close friends of student "suspects."

The balancing of these factors to everyone's satisfaction clearly is an impossibility. Nevertheless, the Lawyers Committee has rewritten this section in light of legal principles and expressed community concern.

The Lawyers' Committee has recognized the possibility that a member of the school staff might feel that he cannot, in good conscience, divulge information which he has acquired by virtue of his position as a confidante of his student. It should be noted, however, that the law does not recognize such a relationship as giving rise to a privilege of confidentiality. Thus, if ordered to do so by a judge, a staff member would have to divulge all information regardless of its source.

Police Questioning (p. 15)

In this area, the Committee has dealt with controls which should be built into the procedure for the students' protection.

TAB 25 appears to be based upon the premise that members of the Oakland Police Department have the legal right to question students "whenever it is deemed necessary," and that the students' parents need not be consulted in advance, nor notified after the fact unless "...the student was involved in the incident as a participant or a witness." Additionally, TAB 25 does not reflect the fact that if a student, acting on his own or with outside advice, does not wish to answer questions, he need not do so. (Whether he could be compelled to answer questions in court, would depend upon whether his answers would tend to incriminate him.)

When a police officer asks a question of an adult and receives an answer, it is assumed that any right not to answer the question is waived. It is often necessary for the police officer to warn the person that he need not answer. Even then, the person may waive his right not to answer.

When a school-child is involved, several new factors are introduced, viz., greater susceptibility to intimidation by "authority", ignorance of the long-range implications, and emotional immaturity. Thus, when a child answers police questions, we cannot so readily say that he has "waived" his right not to answer. It is the premise of the Lawyers' Committee, based upon implications in recent court decisions, that a child's disabilities include the incapacity to make the equivalent of an adult decision to answer or not to answer police questions. A child needs adult help in such a situation and, although some may imagine that the school staff can and will assume this responsibility, the Lawyers Committee believes this to be unrealistic.

Accordingly, the Lawyers Committee has suggested that, except in cases in which a delay would *significantly* affect the investigation or might increase an existing risk of bodily harm to any person, no student should be subjected to any police questioning until the student's parent is contacted, etc. (p. 15). The Committee recognizes that in some situations the necessity to contact parents prior to questioning would be quite burdensome. The Committee, nevertheless, believes that if its procedure is faulty, it should fail in the direction of safeguarding the fundamental constitutional rights of students.

The term "might increase an existing danger of bodily harm to any person," is intended to allow for cases such as missing children where foul play may be involved, severe illness which may be due to consumption of an unidentified drug, etc.

Student Arrests and Student Removal from School (p. 16)

TAB 25 appears to be based upon the belief that a student, though not under arrest, may and should be released to the custody of the Police Department. Again, no provision is made for prior contact with the student's parents.

The Lawyers Committee has clarified the situation by setting up "*Student Arrests*" as a separate heading. In this area, the law is relatively clear.

The Committee then goes on to provide that, when the student is *not* under arrest, the parents' prior permission is almost always required.

Suspensions (pp. 18-20)

The provisions for suspension by teachers are essentially the same as those in TAB 25. This is governed by the Education Code and little control is available to the local governing board.

Under "*Suspension by Principal*", the Lawyers Committee has deleted provision for suspension by *vice-principals* as there appears to be no statutory authority for such suspensions.

TAB 25 paraphrased part of Education Code § 10607.5 under the heading "SUSPENSION BY PRINCIPAL OR VICE PRINCIPAL." This material was inadvertently omitted from the Lawyers' Committee document and should be replaced. The omitted material referred to the conditions under which a student may be suspended for more than 20 days in a school year.

The parent notification and conference procedure following suspension has been reorganized to consolidate seemingly repetitive material in TAB 25 into a single paragraph. Also, the Lawyers' Committee has added a provision for a "representative" to accompany the parent or guardian to the conference.

It is the understanding of the Lawyers' Committee that in many cases teachers record an "F" or a "double F" in class grade for every day of absence during suspension. Obviously, even a good student could quickly be academically crippled by this practice.

It is the position of the Lawyers' Committee that mere absence from class is sufficient academic punishment in the case of suspensions. The Lawyers' Committee believes that suspended students should be encouraged to keep up with academic work even though they are not in class. If academic "punishment" is to be imposed, it should be calculated to educate the student, not discourage him further.

Central Review Board and Expulsions (pp. 20-24)

The material in TAB 25 on the Central Review Board and expulsions has been substantially revised.

TAB 25 provided for a Central Review Board to consider cases of the most serious nature, but also set up a subordinate Expulsion Hearing Panel.

The Lawyers' Committee believes that, inasmuch as it is the Central Review Board which will formulate the recommendation to the Board of Education, the presentation of the student's case should be made to the Central Review Board itself, and not to a separate, small "Hearing Panel." The latter seems to introduce additional, time-consuming steps into the process, which not only tends to make it unnecessarily complicated, but also effectively insulates the Central Review Board from any direct contact either with the student or his parents. For these reasons, the Lawyers' Committee has made no provision for an Expulsion Hearing Panel.

The Lawyers' Committee has suggested that, at the option of the student whose case is under consideration, the Central Review Board include parent, teacher and student representatives from the School-Site Discipline Committee. It is also recommended that, where juvenile court proceedings are pending, the Alameda County Probation Department be invited to designate a member of the Central Review Board for that case.

While it is acknowledged that participation by others than school district personnel will be a considerable departure from past practice, it should be remembered that the function of the Central Review Board is only advisory and that all final decisions will be made by the Superintendent and, in the case of expulsions, by the Board of Education.

The hearing procedures outlined on pp. 22-23 are designed to satisfy the requirements specified by the U.S. District Court in the recent case of Allen vs. Board of Education.

Conclusion

The foregoing comments do not purport to cover all of the changes. It is, therefore, suggested that both TAB 25 and the accompanying Lawyers' Committee recommendation be carefully read and compared.

Excerpts from Recommendations for A Code Revision by the Oakland Lawyers' Committee - corporal punishment

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OAKLAND LAWYERS' COMMITTEE PROJECT SEPTEMBER 23, 1969

RECOMMENDED REVISION OF "TENTATIVE ADMINISTRATIVE BULLETIN 25, STUDENT DISCIPLINE AND CONTROL POLICIES"

* * * * * *

Corporal Punishment

Parents who permit corporal punishment to be administered to their children shall complete a corporal punishment card, which shall be kept on file in an elementary or secondary school office. When corporal punishment would normally be appropriate for a student whose parents have not filed a corporal punishment card, the school principal shall call the home requesting the parent to come to school to take his child home.

A principal of an elementary or junior high school may use corporal punishment, but only when he is convinced that such punishment is appropriate to the individual student involved and is more likely to bring about reasonable improvement in behavior than any other method. The principal may delegate the responsibility for corporal punishment to the vice-principal or the head teacher.

There shall be no cruel or unusual punishment, and there shall be no corporal punishment in the high or evening schools or upon girls. Corporal punishment shall be administered in the presence of a teacher or other competent witness, and only upon the posterior. A report of all cases of corporal punishment shall be filed at the end of each statistical month.

The foregoing definition of corporal punishment does not mean that teachers or administrators may not lay hands upon a student, but that in doing so they are bound to exercise reason and restraint. Physical restraint -- in order to interrupt a student in the process of committing an obvious act of misbehavior, to escort him to proper authority, or to prevent him from injuring himself or others -- should not exceed the minimum of physical force necessary. Except in self-defense, the student is not to be struck with the open hand, fist, or other instrument. Incidents which have required the use of physical force are to be reported promptly to the Principal.

Official Oakland School District Code on Corporal Punishment

EXCERPTS from TAB 25, June, 1970, Oakland Unified School District

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CORPORAL PUNISHMENT

B. A Principal of an elementary or junior high school may resort to corporal punishment when he is convinced that such punishment is appropriate to the individual student involved and is more likely to bring about reasonable improvement in behavior than any other method of treatment at his command. The principal may delegate the responsibility for corporal punishment to the vice-principal or the head teacher. There shall be no cruel or unusual punishment, and there shall be no corporal punishment in the high or evening schools or upon girls. Corporal punishment shall be administered in the presence of a teacher or other competent witness, and only upon the posterior. A report of all cases of corporal punishment shall be filed in the attendance accounting office at the end of each statistical month by each school principal.

EXEMPTIONS FROM CORPORAL PUNISHMENT

Parents not wishing corporal punishment administered to their children will be requested to complete a corporal punishment exemption card, available in English, Spanish, and Chinese and other foreign languages, which shall be available in each elementary and junior high school office. Availability of this card shall be made known to all elementary and junior high school parents each year by means of a District bulletin. Corporal punishment shall not be administered to pupils whose parents have a signed exemption card on file at the school. When corporal punishment would normally be appropriate for a pupil having an exemption card on file, the school principal shall call the home requesting the parent to come to the school to take his child home for the balance of the day.

Official Oakland School District Document
-- on POlice in the Schools

Tentative-For Discussion Only

DRAFT OF 5-28-70

TENTATIVE ADMINISTRATIVE
BULLETIN ____
May, 1970

PROCEDURES FOR WORKING WITH LAW ENFORCEMENT AGENCIES

CLOSE COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES AND THE SCHOOLS

It is the policy of the Oakland Public Schools to cooperate with all law enforcement agencies in matters of mutual concern. In cases involving law violation at the school site, staff members having knowledge of such incidents shall provide information as to the nature of the violation, names of suspects or witnesses, and other relevant evidence to the Police Department.

In conducting police investigations at school, the principal and the representative from the Police Department where possible shall develop and carry out the investigative plan and procedures cooperatively. Staff members shall refrain from engaging in any activity which will interfere with the work of the Police Department.

POLICE QUESTIONING OF STUDENTS AT SCHOOL SITE

Police officers have the legal right to question students at school in connection with their investigations. Those to whom such questions are directed have the legal right either to answer or to decline to answer such questions.

Whenever a police officer wishes to question a student or group of students at the school site, the police officer shall communicate his desire to the principal if the time or situation in the police officer's judgment permits. The principal shall summon the student or students to his office and shall notify the student's parent of the interview as soon as possible after the conclusion of the interview if it is determined that the student was involved in the incident as a participant or as a witness. The principal or his delegated representative shall be present during the interview. It is the policy of the Oakland Police Department, with which the Oakland Public Schools concur, to question students about off-campus matters or incidents, away from the school site wherever practical.

In those cases where a statement is taken by a police officer, the student shall not be requested to sign such a statement unless the approval of his parent or guardian has been obtained.

STUDENT REMOVAL FROM SCHOOL

Police officers have the legal right to place a student under arrest and then remove him from the school premises. Whenever a student is arrested on school premises, the principal shall endeavor to notify the student's parents or guardian as soon as possible. In addition, the Police Department will also make an independent effort to communicate with the student's parent or guardian as soon as possible.

In all cases where an Oakland Police officer desires for investigative purposes to remove a student from school without an arrest, the principal shall immediately notify the student's parents of this request. The parents must approve the student's removal before he can be released to the Oakland Police Department except that in cases of imminent physical danger, the student may accompany the officer without parental consent.

REPORT TO POLICE DEPARTMENT OF SERIOUS INCIDENTS

When there has been an unprovoked attack upon students or staff, attack with a deadly weapon, extortion, vandalism, evidence of serious child abuse, distribution or use of drugs or narcotics, or other serious incidents involving life, limb, or property, the principal shall call the Community Relations and Youth Division of the Oakland Police Department immediately. This action shall be taken regardless of whether or not the identity of the offenders is known. The Superintendent's Office must also be notified immediately, providing the information noted on Form 130085.

FOLLOWUP WITH POLICE DEPARTMENT

School staff members are urged to make telephone contacts with the Community Relations and Youth Division of the Police Department when there are questions regarding police service. There should be a followup telephone call to the Community Relations and Youth Division on those occasions when a call is placed to the Police Department Radio Room or when a beat officer responds to a school's call for assistance. In the more serious cases reported to the Police Department and the Superintendent's Office, followup written reports should be submitted to both offices. Such written statements are needed for record-keeping purposes and frequently serve a useful purpose in followup investigations as well.

AWB:mc

MEMORANDUM BY OAKLAND LAWYERS COMMITTEE MEMBER ON POLICE IN THE SCHOOLS

RUSSELL BRUNO

Attorney-at-Law

October 28, 1970

Dr. Marcus Foster, Superintendent
Oakland Unified School District
1025 Second Avenue
Oakland, California

Dear Dr. Foster:

Thank you for giving me an opportunity to review and comment upon the Tentative Administrative Bulletin pertaining to procedures for working with law enforcement agencies.

It is apparent that we have yet to succeed in disabusing you and your advisors of the belief that the constitutional rights of students and the concomitant rights and duties of School District personnel are subordinate to whatever procedures the Oakland Police Department determines to be most expedient.

Additionally, and perhaps more importantly, it does not appear that sufficient consideration has been given by your staff to the very real limitations which exist with respect to school district action toward pupils, as well as use of school district facilities, with respect to matters which not only are not related to the instructional program, but actively interfere with it and disrupt it.

When parents send their child to a "public full-time day school", in obedience to the mandate of Education Code Section 12101, they do so with the expectation that the school will, in turn, enroll the child in a "full-time" educational program developed and adopted pursuant to Education Code Sections 8001 - 8058.

Parents do not send their children to a "public full-time day school" with the expectation that, instead of providing them with a full-time educational program, school personnel will turn the children over to the Oakland Police Department for interrogation and other purposes, at least where such interrogation, etc. does not pertain to events which occurred while the child was under the jurisdiction of the School District. Neither do parents and the taxpayers of the School District expect the Governing Board to authorize the use of District facilities for this purpose, except as expressly permitted by law.

It is of course essential from a procedural point of view, to differentiate between (1) police investigation pertaining to an event which has occurred in the past and (2) police intervention, control, and investigation of an event which is presently threatened, occurring, or has occurred within the immediate past, i.e., while it is reasonable to assume that the participants and material witnesses are still at or near the site of the event and the physical evidence is still fresh. For the most part this letter will be concerned with school-site police investigation of off-site "stale" events, although many of the principles and suggested procedural safeguards are also applicable to investigations of school-related events.

The powers, duties and obligations of a school district must be found within the limits of the statutory provisions governing school districts. In this connection it has been established that school districts are quasi-municipal corporations of the most limited powers known to the law. Their trustees have special powers and connot exceed the limit of such powers. Hutton v. Pasadena City Schools (1968) 261 Cal. App. 2d, 586, 592, 68 Cal. Rptr., 103, and authorities cited therein. The initial question, then, is whether the "special powers" of the Oakland Unified

School District, as delineated by the Education Code, include the power (1) to interrupt a students' full-time education and place him at the disposal of the Oakland Police Department without his parents knowledge or consent, and (2) grant to the Oakland Police Department and other law enforcement agencies the use of School District facilities for the purpose of conducting investigations of events unrelated to the School District or school attendance.

Education Code Section 10609 provides that:

> "All pupils shall comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of the schools."

This is not particularly helpful, because the limits of the "regulations" and "authority" are not defined.

The rights and duties of certificated personnel are established by Education Code Sections 13552 - 13570, which provides:

> "Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. A teacher, vice principal, or principal shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. The provisions are in addition to and do not supersede the provisions of Section 10854 (corporal punishment) of this code." Education Code, Section

It would not appear from Education Code Section 13557 that certificated personnel have any express authority pertaining to events unrelated to school attendance. *A fortiori*, they would not have any authority to act to interrupt a students' full-time education and place him in the custody and control of law enforcement personnel without the knowledge or consent of the students' parents. In short, such a decision appears to have been reserved by the legislature for the parent.

Even in the important area of prevention and control of communicable disease, the legislature has recognized and preserved the paramount rights of the parents. For example, Education Code Section 11704 provides that for the purpose of such prevention and control:

> "(T)he board may use any funds, property, and personnel of the district, and may permit any person licensed as a physician and surgeon to administer an immunizing agent to any pupil *whose parents have consented in writing to the administration of such immunizing agent*."
> (emphasis supplied) Also see Health and Safety Code Section 3404 (measles shots)

Another Education Code, Section 11709, deals with the non-liability of the school district and others for treatment of an enrolled child,

> ". . . without the consent of a parent or guardian of a child when the child is ill or injured during regular school hours, requires reasonable medical treatment, *and the parent or guardian cannot be reached* unless the parent or guardian has previously filed with the school district a written objection to any medical treatment other than first aid." (emphasis added).

It is particularly noteworthy that it is expected of the school district that an attempt, at least, be made to reach the parent or guardian, to obtain consent for medical treatment for a child who is ill or injured during school hours.

An Education Code Section pertaining to a somewhat, albeit obliquely, analogous situation is Section 11801, dealing with the mental examination of pupils. It provides, in part:

> "Upon the report of the principal of a school that a pupil shows evidence of impaired mental health and that a mental examination is desirable, the governing body of a school district may, with the written consent of the pupils' parent or guardian provide for the mental examination of said pupil." (emphasis added.)

The same requirement of prior written consent of the parent or guardian is imposed with respect to psychiatric treatment. See Education Code Section 11804, which concludes:

> "This section does not authorize any officer or employee to administer psychological or psychiatric treatment to a pupil either within the school of the pupils' attendance or at a place outside of such school without the written consent of the parent or guardian." (emphasis added.)

The Education Code also provides that group medical or hospital insurance may be made available, but at the same time provides:

> "No pupils shall be compelled to accept such service without his consent, or if a minor without the consent of his parent or guardian." Education Code Section 11853. (emphasis added.)

The governing board of any school district may establish and maintain a school safety patrol,

> ". . . , "but no pupil shall be designated to serve on any patrol unless the pupil and the person having legal custody of such pupil consent, in writing thereto." Education Code Section 12053 (emphasis added.)

The above-mentioned Education Code sections, while specifying that the prior consent of parents is required in various circumstances, deal with matters reasonably related to the childs' attendance at school. At the same time, the Legislature has recognized the possibility that school district personnel, if wholly unrestrained, might concern themselves with the private life of a student or his parents. Accordingly, two years ago the California Legislature enacted Education Code Section 10901, which provides:

> "No test, questionnaire, survey or examination containing any question about the pupil's personal beliefs or practices in sex, family life, morality and religion, or any questions about his parents or guardians' beliefs and practices in sex, family life, morality and religion, shall be administered to any pupil in kindergarten or grade 1 through grade 12, inclusive, unless the parent or guardian of the pupil is notified in writing that such test, questionnaire, survey, or examination is to be administered and the parent or guardian of the pupil gives written permission for the pupil to take such test, questionnaire, survey, or examination." (emphasis added.)

The above-quoted section does not purport to be all-inclusive. Nevertheless, it seems clear that it is the intention of the Legislature that schools confine themselves to activities which will contribute to the education of children. This Legislative intent also is inherent in provisions of the Education Code dealing with Average Daily Attendance. Thus, Education Code Section 11251 provides, in part:

> "In computing the average daily attendance of a school district, there shall be computed only the attendance of pupils while engaged in education activities required of such pupils and under the immediate supervision and control of an employee of the school district who possessed a valid certification document, registered as required by law, authorizing him to render service in the capacity and during the period in which he served." (emphasis added.)

Other pertinent sections are Section 10953 and Section 10955.

> "10953 Total Days of Attendance. The total days of attendance of a pupil upon a regular full-time day kindergarten, elementary school, high school, junior college, or schools or classes maintained by the county superintendent of schools during the fiscal year shall be the number of days school was actually taught for not less than the minimum school days during the fiscal year less the sum of his absences due to causes other than those specified in this article. (i.e. Section 10955)." (emphasis added.)

> "10955 Absence excluded in computing attendance. No absence of a pupil from school:
> (a) Due to his illness, or
> (b) Due to quarantine under the direction of a county or city health officer, or
> (c) For the purpose of having medical dental, or optometrical services rendered,
>
> shall be deemed an absence in computing the attendance of a pupil."

According to the California Attorney General,

> "Only attendance as provided by Education Code Section 11251 may be counted for apportionment purposes. Education Code Section 10955 lists absences due to illness, due to quarantine, or for the purpose of having medical, dental or optometrical services as constituting the only statutory absences authorized in computing pupil attendance." (See Tit. 5, Calif. Adm. Code, Sections 11 to 13.2) 39 Ops. Atty Gen. 45, 47.
>
> "Title 5, California Administrative Code, Section 9 sets forth the rules respecting attendance accounting and reductions for absence. Subdivision (1) of Section 9 provides that whenever a pupil is excused to attend an activity which does not meet the requirements of Education Code Section 11251, only his actual attendance may be counted and computation of such attendance is as provided in subsection (i). Under subsection (i) a day of attendance for such a pupil for apportionment purposes is computed by dividing the total hours of his actual attendance by the hours equivalent to a minimum day. Under this formula there would be a reduction in apportionments to the school district unless the actual attendance at school of a pupil excused to attend a non-qualified activity was equal to the minimum

Thus, for example, a school district will suffer reduction in state apportionment funds if students are released for attendance at sessions conducted by the "Christian Anti-Communism Crusade" unless such students attend public school classes for a minimum school day. 39 Ops. Atty Gen. 45, 46. Interrogation by the Oakland Police Department regarding events unrelated to school attendance would of course also be a "non-qualified activity" and time devoted to such an activity could not be included as part of the student's minimum day.

In summary, it is clear that the school district has no authority, without the knowledge and consent of his parent or guardian, to cause a student to be absent from his compulsory attendance in a full-time course of instruction, for purposes of police investigation of matters unrelated to the child's school attendance. The absence of a student from his classes for such a purpose must, in any case, be taken into account in computing ADA.

So much for the legal authority of the school district vis-a-vis the student. Attention now is turned to the related question whether authority exists for turning school district facilities over to the Oakland Police Department and other law enforcement agencies for the purpose of conducting investigations of events not related to school attendance.

The use of school property for public purposes is governed by Education Code Sections 16551 - 16563.

Section 16551 provides, in pertinent part, as follows:

> "The governing board of any school district may grant the use of school buildings or grounds for public, literary, scientific, recreational, educational, or public agency meetings, or for the *discussion of matters of* general or *public interest* upon such terms and conditions as the board deems proper, and *subject to the limitations, requirements, and restrictions set forth in this chapter* (commencing at Section 16551)" (emphasis added.)

Thus, if the investigation by the Oakland Police Department of events unrelated to school attendance falls within the term "matters of public interest", use of "school buildings or grounds" for that purpose would seem to be permissible, but subject to the "limitations, requirements and restrictions" set forth in the rest of cited chapter of the Education Code.

The principal limitations to which the governing board, as well as any potential user of school facilities, is subject, appears in Education Code Section 16552.

> "*Section 16552 General Restrictions in Use.* No use shall be inconsistent with the use of the buildings or grounds for school purposes, or interfere with the regular conduct of school work."

The answer to the question whether use for police investigation of events unrelated to school attendance is "inconsistent with the use of the buildings or grounds for school purposes" would necessarily depend upon the particular situation. Obviously, if the Principals office is turned into an interrogation room during school hours, the Principal will be unable to use it for "school purposes" and such a use necessarily would be "inconsistent." The same objection might not apply to other space which might not be needed for "school purposes" at a particular time.

The second question, i.e., whether such a use of school facilities by the Police Department will "interfere with the regular conduct of school work", is much easier to answer. If, in using school facilities, the Police Department will at the same time cause an interruption of the "compulsory full-time education" of even one child, this necessarily will "interfere with the regular conduct of (the) school work" of that child. And of course it may also be generally disruptive.

Accordingly, it must be concluded that although subject use of school facilities by law enforcement agencies is legally permissible, this is so only so long as the facilities are not in use for school purposes and there is no interference with the regular conduct of school work, i.e., in short, either before or after "school."

To summarize to this point, it may be said that (1) at least in the absence of express parental consent, school district personnel are not authorized by the Education Code to take any action whatsoever to place a pupil at the disposal of the Oakland Police Department for questioning about events unrelated to his school attendance, (2) pupil absences from class for purposes of police questioning, etc., are non-qualifying for purposes of computing Average Daily Attendance, and (3) if such police questioning, etc. falls within the term "matters of public interest" as used in Education Code Section 16551, the governing board may permit use of school buildings and grounds for such a purpose, but only if such use does not interfere with the use of the buildings or grounds for "school" purposes and only if such use does not interfere with "the regular conduct of school work".

It should be noted as to "(1)", above, there is a further question whether, by consenting, parents may confer authority and responsibility upon school district personnel as to matters, such as this, not expressly covered or mentioned in the Education Code. Cf. Education Code Section 11753.1. It should also be noted that "(2)" and "(3)" above, are considerations altogether independent of "(1)" and of each other.

Beyond the foregoing, there is the question of the preservation of the rights of students and also student disabilities such as diminished capacity, which must be considered. And of course in this context when we refer to "rights" we are referring to those which are relevant to those school-site police interrogations "brokered" and "monitored" by school district personnel. Interrogations conducted elsewhere or without the knowledge and participation of school district personnel obviously are not the proper subject of a district administrative bulletin.

In broaching this subject, one is tempted to present a summary, at least, of the "law" pertaining to police questioning, drawing little blurry lines between "neutral, investigatory activities" and "accusatory investigation"; the "totality of circumstances" and the "capacity" doctrines, etc. But to do so would be to imply that an understanding of this complex and ever-shifting area of the law is a necessary precondition to intelligent, sensitive legislation on the subject by the Board of Education. This is not the case. It is necessary only that the School District understand that other people's constitutional rights, especially those which belong to other peoples' children, should be accorded great respect and handled, if at all with utmost care.

What does this mean? Useful instruction is found in the following quotations from Harling vs. United States, (D.C. Cir. 1961,) 295 F. 2d, 161 at page 163:

> "Aside from the requirements of expressly applicable statutes, the principles of 'fundamental fairness' govern in fashioning procedures and remedies to serve the best interests of the child. It would offend these principles to allow admissions made by the child in the non-criminal and non-punitive setting. . . to be used later for the purpose of securing his criminal conviction and punishment. Such a practice would be tantamount to a breach of faith with the child. . .[12]
>
> "12. In this connection we note the authoritative Standards for Specialized Courts dealing with Children (Childrens' Bureau, Department of Health, Education and Welfare, 1954) at pp. 38-39:
>
> 'Because of the child's presumed immaturity, special safeguards should be thrown around a police officer's interview with a child in investigating a delinquent act. In certain situations, depending on the age of the child, and the act committed, waiver to criminal court may be a possibility. Moreover, at the time of the interview, it is not known whether or not the court specializing in children's cases will retain jurisdiction over the case if a petition is filed, or will waive its jurisdiction and permit the child to be tried in a criminal court. Therefore, it cannot always be assumed that the police interview will lead only to a noncriminal proceeding.

> Before being interviewed, the child and his parents should be informed of his right to have legal counsel present and to refuse to answer questions if he should so decide. In cases where waiver is possible, he should also be cautioned that if he answers, his answers may be used not only before the specialized court but possibly in a criminal court. Where a child has been questioned alone by a police officer, without having been given an opportunity to secure the presence of his parents, guardian, or counsel, his statement during such interview should be presumed to have been induced either by the child's immaturity or by the idea that they would be used only in the specialized court and they should, therefore, unless the presumption is overcome, be excluded from admission before a criminal court in which the child may be a defendant.
>
> Whenever possible and especially in the case of young children, no child should be interviewed except in the presence of his parents or guardian. This should always be the policy when a child is being questioned about his participation or when a formal statement concerning the child's participating in the alleged delinquent act is being taken. * * * '
>
> See also Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 561 - 62 (1947), although dealing solely with admissions made in Juvenile Court itself. Of course, the problem is accentuated in cases, such as this one, where the admissions are extra-judicial, entirely unenvironed by any court protections. Moreover, we do not believe that the question of admissibility of the child's statements as evidence against him in the District Court should vary from case to case depending on criteria which could at best only partially indicate the child's capacity to waive his rights." (emphasis added.)

Decisional law on the subject of police questioning of minors generally is concerned with situations wherein the minor is in police custody and has been temporarily isolated by the police from all external protection and control. Most often the question is whether a "confession" made under such circumstances is valid and admissible in evidence against the child. In many cases the question of "coercion" is involved, but during the past several years the decisions have begun to come to grips with the more fundamental question of the extent to which "adult" Constitutional rights are (1) available to and (2) subject to waiver by minors. It should be noted that *none* of the cases have dealt with the obligation, if any, of school personnel toward (1) the police, and (2) the children, who are the objects of police attention while at school. We must therefore extrapolate.

The recent landmark decision on the subject of juvenile rights is *In re Gault*, 387, U.S. 1, 18 L.Ed. 2d, 527, 87 S. Ct. 1428. The question in that case was whether the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. On May 15, 1967, the U. S. Supreme Court answered the question in the affirmative. The *Gault* case was concerned with Juvenile *Court* procedures and the Court took pains to point out that "we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process. . . " (Id. at p. 13 (18 L. Ed. 2d at p. 538)) This of course is not to suggest that the Supreme Court will not eventually concern itself with such procedures and rights.

It has been urged by many that *every* minor is incompetent *as a matter of law* to waive his constitutional rights to remain silent and to an attorney unless the waiver is consented to by an attorney or by a parent or guardian who has himself been advised of the minor's rights. This may now

be the Federal rule (See *Harling vs. United States*, supra) But in a decision handed down four months after *Gault*, the California Supreme Court expressly declined to adopt this approach. Instead, the Court took the position that the question whether a minor's waiver of his rights is effective is a factual question to be decided on the "totality of the circumstances" of each case. *People vs. Lara*, 67 Cal. 2d, 365, 62 Cal. Rptr. 586, 432, P. 2d, 202, Peters, J., dissenting at length. But, for us, the significant language of the California Supreme Court is the following:

> "Such adult (i.e., attorney or parent) consent is of course to be desired, *and should be obtained whenever feasible*." *People vs. Lara*, 67 Cal. 2d, 365, 379 (emphasis added.)

The Supreme Court of California reiterated and repeated the above-quoted language again last year. *In re Dennis M.* (1969), 70 Cal. 2d, 444, 462, 463, 75 Cal. Rptr., 1, 450, P. 2d 296.

In 1968, after both *Gault* and *Lara*, the California Supreme Court declined to review the unanimous decision of the Court of Appeal (Third District) in the case of *In re Teters*, 264 Cal. App. 2d, 816, 70 Cal. Rptr. 749. This case involved juvenile court proceedings against a 14 year old boy charged with auto theft. The case was somewhat similar to *Gault*, in that it involved juvenile court procedures, but it *also* involved *pre-judicial procedures employed by the police*.

When the police officers first discovered Tom Teters and another boy walking along a county road, it was obvious that they were the subjects of a missing persons report. They were taken into custody and transported to the Sheriff's office "to be held pending the arrival of their parents." But upon arrival at the Sheriff's office, the two boys were separated and interrogated to determine if they were involved with a car theft which had occurred in the same vicinity on the same day.

The officer asked Tom about the car and Tom replied that he knew nothing about it. Tom was then asked if he knew how to drive and he replied in the negative. The officer then told Tom that he (the officer) knew that Tom could drive on the basis of the information in the missing persons report. Tom then admitted that he could drive. Tom was again asked about the car, and this time he stated that he and his companion had taken the car. The officer then advised Tom of his constitutional rights as prescribed in Miranda vs. Arizona, 384 U.S. 436 (16 L. Ed 2d, 694, 86 S. Ct. 1602, 10 ALR3d 974), which were read from a card. When asked, Tom replied that he understood these rights and was willing to waive them. Tom also stated that he did not want an attorney when asked whether he wished one. The officer also asked Tom: "Having these rights in mind, do you wish to talk to us now?" Tom responded affirmatively and then made a complete confession regarding the car theft. On the basis of the evidence thus obtained, Tom was declared a ward of the court. Tom appealed.

On appeal Tom contended that since neither he nor his parents were advised of the right to counsel or right to remain silent prior to the interrogation, the statements obtained from him are not admissible as evidence. The appellate court agreed, saying:

> "We hold that appellant, at the time he was questioned and gave his answers, was a suspect and the questioning was custodial interrogation. The juveniles were in custody as 'run-aways' and the officers were seeking information prior to the arrival of the parents. It is true that the conduct of the officers during the 15-minute inquiry was neither oppressive nor coercive. However, the questioning was conducted under the conditions which invite coerced confessions and other evils of custodial interrogation and falls within the scope of the Miranda warning rule."

* * * * *

> "'While the defendant here had not been formally arrested, we have long held that a suspect must be fully apprised of his rights upon being ushered into a police station and detained for questioning (citations).'"

In re Teters, 264, Cal. App. 2d, 816, 818-819.

And, quoting Gault,

> "'If (in cases involving juveniles) counsel is not present for some permissible reason when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright or despair.'" Id at 824 (emphasis added.)

We are assured by the Oakland Police Department that the so-called "Miranda warning" will be given -- probably by reading it from a card -- at the "appropriate time." Presumably, when, in the opinion of the police officer, the procedure crosses that fuzzy line between "neutral" and "accusatory" investigation. The Teters case is an excellent, typical example of what happens to a child's constitutional rights when the police -- whose job is to solve crimes -- have unfettered access to him. The officer's first order of business is to get the "police work" out of the way. Then, if it seems expedient, he may advise the child of his "rights" for whatever good this may do the child after he has been induced to "spill the beans."

> "Come in, son, sit down. We just want to ask you a few questions."

I have pointed out that for the most part the decisional law in this area deals with law enforcement activities which have occurred in relation to citizens, including children, who, at the time in question, were totally isolated from friendly adult counsel.

Enter, Oakland Unified School District.

Although it is sometimes said that the school stands "in loco parentis" to the child, no one would seriously suggest that when a child is under its jurisdiction the school is the equivalent of its parent, with all parental rights and obligations. On the contrary, the term "in loco parentis", if it is applicable at all, would seem to pertain more to the physical control of students than to anything else. See Education Code Section 13557, supra, p.3. As to most other matters -- and especially where non-educational questions are involved -- the Code requires consultation and consent of parents. See pp. 4-7, supra. In practice, many schools obtain parental consent in many additional areas, such as for field trips, tutoring by volunteers, etc. If the school district may not ignore the child's parents in such matters, surely it may not do so with respect to the matter of police interrogation. It should be recalled, at this point, that on two separate occasions within the past three years the Supreme Court of California has said that adult, i.e., attorney or parent, consent not only is desirable, but "should be obtained whenever feasible". People vs. Lara, 67 Cal. 2d 365, 379; In re Dennis M., 70 Cal. 2d, 444, 462-463. Thus, assuming that the school district decides that it has the authority to remove a child from his instructional program to be interrogated by police officers (using school district facilities), the question which school district personnel must consider before such an interrogation occurs is whether it is feasible to seekparental consent.

The question of feasibility will of course depend upon the circumstances. Where, as frequently is the case, the event being investigated is somewhat "stale", the minimal delay occasioned by an attempt to contact the parents will be of no consequence. If the parent cannot be reached by phone, the child may be given a consent form to be taken home and returned. Perhaps the form now in use for field trips could be adopted. On the other hand, if the investigation pertains to a "fresh" event and may, if completed expeditiously, even affect the course of the event, it may not be feasible to obtain prior parental consent. It is submitted, however, that the latter situation is the exception and not the rule.

On the basis of my re-examination of this question, and further research, I feel that the procedures recommended in our recommendations of September 23, 1969, should be modified somewhat. I am appending a suggested revision for your consideration.

I know you will again be consulting with the County Counsel and with Police Department representatives. Accordingly, I am taking the liberty of sending copies of this letter to those agencies.

Again, our sincere thanks for the opportunity to express our views on this exceedingly important matter.

Very truly yours,

Russell Bruno

RUSSELL BRUNO

RB:fab

cc: Larry Litke, Esq.
cc: Chief Charles Gain

COOPERATION WITH LAW ENFORCEMENT AGENCIES

Police investigations are deemed to be matters of public interest within the meaning of Education Code Section 16551 and it is the policy of the Oakland Public Schools to cooperate with all law enforcement agencies. At the same time, the uninterrupted and undisturbed operation of each school as an educational institution is of paramount importance and it is the responsibility of each member of the school staff to avoid unnecessary interruptions of the full-time educational program.

The importance of the foregoing policy is recognized by the Oakland Police Department. It is therefore the policy of the Oakland Police Department to conduct its investigations and other business in a manner designed to minimize such interruptions. It is the responsibility of each staff member to assist and cooperate with the Police Department in accomplishing this goal.

Unnecessarily prolonged police investigations at the school site are not desirable. It is therefore the responsibility of each staff member to refrain from engaging in any activity which would tend to interfere with the investigative work of the Police Department. To the extent that he is free to do so without violating his position of trust in relation to his students, each staff member having knowledge of the matter being investigated should so inform the police investigator and should cooperate in supplying relevant information.

POLICE INVESTIGATIONS AT THE SCHOOL SITE

It is the policy of the Oakland Police Department that investigations of events unrelated to the School District or to the school attendance of students will not be conducted in school buildings or on school grounds unless it is not reasonably possible to conduct such investigations elsewhere. Permission for the use of school buildings and grounds for such investigations shall be granted only if such use is not inconsistent with the use of the buildings and grounds for school purposes or if such use does not interfere with the regular conduct of school work. (Education Code Section 16552)

Whenever a Police Officer wishes to interview a student when school is in session, the Police Officer shall communicate with the principal, if the time or situation permits. The principal shall determine the purpose of the proposed interview and whether the officer wishes to conduct the interview on the school premises. If it is determined that the officer wishes to conduct the interview on the school premises, the principal shall arrange for the interview to be conducted at a time and place which will not interfere with school activities or the regular conduct of school work. The prior consent of the student's parent or guardian to such interviews should be obtained whenever feasible. Accordingly, the principal shall immediately attempt to notify the student's parents, guardian or authorized representative of the police request. Except in cases in which it is clear that any delay would significantly affect the investigation or might increase an existing danger of bodily harm to any person, no student shall be questioned by Police Officer(s) at the school site unless the student's parents, guardian, or authorized representative has been contacted and given an opportunity to confer with the student and has had a reasonable opportunity to be present during such questioning.

In circumstances which warrant questioning of a student before his parent, guardian, or authorized representative can be contacted, if the student affirmatively consents to be questioned without his parents' knowledge and consent, the principal or his designee shall remain with the student during such questioning. The principal or his designee shall not otherwise participate in the questioning of the student. In all cases of police interrogation of a student without the knowledge or consent of his parents, guardian, or authorized representative, written notice of the interrogation shall immediately be sent to the parent.

STUDENT ARRESTS

Police officers have the legal right to place a student under arrest and then remove him from the school premises. Whenever a student is arrested on school premises, the principal shall notify the student's parents at once. In addition, the Police Department will make an independent effort to communicate with the student's parents or guardian as soon as possible.

When it is necessary for the Police Department to arrest a student at the school site, it is the responsibility of each staff member to cooperate with the Police Department to insure that the arrest is made without unnecessary publicity and embarrassment to the student involved.

STUDENT REMOVAL FROM SCHOOL

From time to time the Police Department may desire to have a student accompany a Police Officer off the school premises although the student is not under arrest. In all such cases the Police Officer will make his request through the principal, who shall immediately notify the student's parents, guardian, or authorized representative. The parent, guardian, or authorized representative must authorize the student's removal before the principal may permit the student to accompany the Police Officer off the school premises, except that in cases where any delay might increase an existing danger of bodily harm to any person, a student may accompany the Police Officer without prior parental authorization. In such cases, the student's parents shall be notified as soon as possible.

ATTENDANCE RECORDS

Whenever a student is excused from his classes to attend an interview with law enforcement officers, or otherwise participate in a police investigation, either at the school site or elsewhere, and the interview or investigation pertains to events unrelated to the school district, the time consumed by such an interview shall not be counted as part of the minimum school day of the student involved.

Whenever a student is placed under arrest at the school site, he shall be considered to be absent from the school as of the time he is placed under arrest.

CITY-WIDE YOUTH COUNCIL

OF

SAN FRANCISCO

Final Draft

STUDENTS RIGHTS AND RESPONSIBILITIES MANUAL FOR THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

FOREWORD

The Education Committee of the City-Wide Youth Council of San Francisco has been meeting since August of 1970 in order to review and suggest revisions in the Disciplinary Code of the San Francisco Unified School District. We believe that the code in its present form is unrealistic in handling situations distrubing to the educational process. We therefore propose the adoption of the Students Rights and Responsibilities Manual with a provision to allow each school to modify it to fit it needs. When a student believes that the educational system is contradictory to his development and that he has no voice in determing the content of his education, he takes - action - and justifiably so - to rid himself of unjust and intolerable situations. It is our belief that by setting up a situation of which a student can consciously be part and in which he can function responsibly, many of the destructive aspects of student behavior will be alleviated. It is in this spirit that this document on Students Rights and Responsibilities is presented.

The Education Committee of the City-Wide Youth Council
of San Francisco

c/o The Human Rights Commission of San Francisco
1095 Market St., Room 501
558-4901

I. STUDENT RIGHTS AND RESPONSIBILITIES

PREAMBLE - RESPONSIBILITIES

Students have the responsibility to respect the rights of all persons involved in the educational process and to exercise the highest degree or self-discipline in observing and adhering to legitimate rules and regulations. Responsibility is inherent in the exercise of every right. It is impossible to list all student responsibilities, but it must be emphasized that lack of responsibility weakening of rights. Correspondingly, it is impossible to list all of the rights of students. Therefore, the following list of rights shall not be construed to deny or limit others retained by students in their capacity as members of the student body or as citizens.

A. RIGHTS

1. Students have the right to a meaningful education that will be of value to them for the rest of their lives.
2. Students have the right to the maintenance of high educational standards. The maxiumu potential of the student must be developed.
3. Students have the right to a meaningful curriculum and the right to voice their opinions in the development of such a curriculum.
4. Students have the right to physical safety and protection of personal property.
5. Students have the right to safe buildings and sanitary facilities.
6. Students have the right to consultation with teachers, counselors, and administrators, and anyone else connected with the school if they so desire.

7. Students have the right to free election of their peers in student government, and all students have the right to seek and hold office.

8. Students have the right to democratic representation in administrative committees affecting students and student rights.

9. Students have the right to participate in the development of rules and regulations to which they are subject and the right to be notified of such rules and regulations.

10. Students and their parents or authorized representatives have the right to see their own personal files cumulative folders, transcripts, deans files, etc., at any time during school hours and have the right to be notified if adverse comments are placed in such records.

11. Students have the right to be involved in school activities if they so desire without being subject to discrimination on any basis.

12. Students have the right to exercise their constitutional right of free speech, assembly and appearance.

    a. Students have the right to wear political buttons, armbands or any other badges of symbolic expression.

    b. Students have the right to form political social organizations.

    c. Students have the right to use bulletin boards without prior censorship requirement of approval by the administration or Board of Education. Students have the right to their own bulletin boards which shall be situated in a promient place determined by students.

d. Students have the right to distribute political leaflets, newspapers or other printed matter both inside and outside school property without prior authorization of, or restriction by school administration or the Board of Education, provided, however, the time of such distribution may be limited to before and after school, during lunch or other free periods so as to prevent interference with classroom activities.

e. Students must refrain from any distribution or display of materials which are obscene according to the current legal definitions, which are libelous, or which advocate the commission of unlawful acts.

f. Students have the right to determine their own appearance, including the style of their hair and clothing.

g. Students have the right to use public address systems in school without prior censorship; however; the time of announcements may be limited to before and after school, during lunch or other free periods so as to prevent interference with class procedures.

13. Students have the right to present petitions, complaints or grievances to school authorities and the right to receive prompt authoritative replies from school authorities regarding the disposition of their petitions, complaints, or grievances.

14. Students have the right not to be penalized in any way by the school administration for the beliefs they hold and upon which they act, provided they do not violate the rights of others.

15. Students have the right to respect from teachers and administrators, which would exclude their being subjected to cruel and unusual punishments, especially those which are demeaning or derogatory, or which dimish their self esteem or excludes them from their peers.

16. Students have the right not to be searched or to have their lockers, automobiles, or personal belongings subjected to arbitrary searches and seizures. No student's name, address, or telephone number shall be given without the consent of the student.

B. RECOURSE

If a student feels his rights have been violated he may request a hearing before the Mediation Committee. If the students claim is justified and the committee votes that his rights have been violated, the committee shall have the power to take whatever steps are necessary to rectify the violation, subject to ratification by the City-Wide Mediation Committee. If the City-Wide Mediation Committee does not ratify the decision of the School Mediation Committee, a full hearing shall be held before the City-Wide Mediation Committee within five school days.

II. DISCIPLINARY ACTIONS

A. SUSPENSIONS

1. Removal by a teacher:

a. Good Cause: Good cause for teacher removal of a student from class shall consist of disruptive behavior by the student which makes it impossible for other sutdents to continue the learning process.

b. Length of time: The right of any individual teacher to remove a student should be limited to removal from the teacher's class for one school period.

c. Action taken: Whenever a teacher determines that a student should be removed from class, the teacher should send said student to a referral room or cooling-off room or other appropriately supervised facility on the school premises. At the termination of the class hour from which the student has been removed, the student shall proceed to his normal classes.

d. Conference: The teacher and student shall arrange a conference on the day of the removal or as soon thereafter as possible. A neutral third party, agreeable to both parties, shall be present if so desired by either party. The problem giving rise to the student removal from the classroom shall be discussed as informally as possible.

e. Records: No indication of such teacher removal shall be made on any permanent record of said student. No one outside the school, other than parents or their authorized representatives, shall ever be advised of such action.

COMMENT:

While it is recognized that under California State Code 10601 the teacher may suspend a student from his or her class for the remainder of the day plus one day for good cause, in the past such practice has proved ineffective. Therefore teachers should not suspend a student for more than one class period. Because the student may be removed by the teacher through an error in judgement and without any hearing or opportunity to defend himself, such removal should not be recorded on the permanent records of the student. Retention of the teacher's right without any hearing is viewed as an accommodation to the needs of the teacher to remove a disruptive student from the classroom immediately. However, such power should not extend to permanently mark the student's records, thereby affecting his college and employment opportunities.

f. Further Action: If the teacher believes that the student's conduct requires suspension for more than one class period or one school day, the teacher may recommend administrative suspension for further disciplinary action for the student. The teacher may recommend to the principal, that administrative suspension be initiated, if the teacher believes the student is guilty of an act which constitutes grounds for administrative suspension. (see administrative suspensions).

g. If the student feels he was unjustly removed from class, he may request a hearing before the Mediation Committee. The Mediation Committee shall make a full investigation of the teacher initiated student removal to determine if it was justified. If the Mediation Committee rules that the removal was unjust, a record of its finding shall be placed in the personnel file of the teacher at the local school, unless the teacher appeals to the City-Wide Mediation Committee and the decision is reversed.

2. ADMINISTRATIVE SUSPENSION

   a. Grounds: A student may be suspended for the following reasons only:

      1) Assault on school personnel.
      2) An unprovoked attack on another student.
      3) Assault with a deadly weapon.
      4) Possession of a deadly weapon.
      5) Arson or attempted arson.
      6) Extensive damage to school property.
      7) Extortion
      8) Sale of dangerous drugs.

Under no circumstances shall a student be suspended for the use of alcoholic beverages or drugs, but should be referred to a facility specializing in the rehabilitation of persons with such problems, or a place designated by a school administrator. Students may not be suspended for truancy, tardiness, or cutting class. The following appropriate steps should be taken:

1) Inform student of consequences of cutting assigned classes.
2) Notify parents of excessive cutting and tardiness and possible consequences.
3) Refer to counselor, social worker or attendance worker.

4) Visit home of pupil having problems.

5) Hold conferences with parents, and pupils having problems. Teachers should be included in any conference.

6) Issue medical blanks for proof of illness and initiate home teacher application if conditions of physical or emotional illness are likely to extend for eight or more weeks.

7) Recommend plans for treatment, medical care, or modification of school programs.

8) Discuss case with school social worker and refer student to social service agencies or clinics.

9) Placement on minimum day program.

10) Confer with community agencies interested in the pupil and his family.

11) Issue summons to parents, preliminary to court action when indicated.

12) Refer to continuation school or other type of program for adjustment purposes.

13) Refer extreme cases of habitual truancy to juvenile court after consultation and approval of the supervisor of attendance services.

b. Procedure

1) Commencement: An Administrative Suspension may be initiated only if the student is alleged to have committed any of the above acts, by (1) an administrator; (2) upon application of any teacher; and (3) by recommendation of the School Mediation Committee.

2) Action: The student may be suspended by the school

principal, pending a conference between the parent/student/teacher and administrator involved.

3) Notification and Conference: The parents or guardian of the student must be immediately notified of the suspension of the student by the school principal and shall be requested to attend a conference between the parent/student/teacher and administrator as soon thereafter as possible and in no case to exceed a period of three school days.

4) Referral to School Mediation Committee: If further suspension is recommended after the parent/student/teacher/administrator conference is held, and if the student believes further suspension or discipline is unjust, he may appeal to the School Mediation Committee. The School Mediation Committee shall hold a hearing as soon as possible after the conference, in no case to exceed five school days. The decision of the School Mediation Committee shall be subject to ratification by the City-Wide Mediation Committee. If the City-Wide Mediation Committee does not ratify the decision of the School Mediation Committee, a full hearing shall be held before the City-Wide Mediation Committee within five school days.

B. EXPULSIONS, EXCLUSIONS AND DISCIPLINARY TRANSFERS

1. Hearings: Pending expulsion or disciplinary transfers, a student shall have a right to a hearing before the City-Wide Mediation Committee. In the case of all ex-

pulsions, students shall be entitled, if necessary to exercise his statutory right to a hearing by the Board of Education prior to any expulsion action.

2. Grounds for Expulsion or Exclusions:

   a. Expulsions: The only circumstances in which a student may be expelled from the San Francisco Unified School District is when the student has committed an act on school property of such a nature that a student's continued presence in school would be a danger to the physical safety of others.

   b. Exclusions: No students shall be excluded from school except in the case of infectious or contagious disease, or mental illness such as to cause his attendance to be inimical to the welfare of other students.

D. CORPORAL PUNISHMENT

1. No student shall be subject to the infliction of corporal punishment by any teacher, administrator or other school personnel.

2. Corporal punishment is defined as the use of physical force upon a student as a punsihment for a past offense. Anyone on school grounds has the right to use physical means to defend himself or restrain another from physically harming another person.

III. SCHOOL MEDIATION COMMITTEE

PREAMBLE:

The School Mediation Committee is designed to serve as a recourse in any case when a student considers himself unjustly subjected to disciplinary action by any member of the personnel in his school. The structure of this committee is based upon two principal concepts:

First, every student subject to disciplinary action should have the opportunity to present his side of the dispute before an impartial tribunal if he so desires.

Second, under current school procedures, a student has no opportunity to appeal a disciplinary action, where he feels such action is unjust. Discipline which is imposed by school administrators upon sutdents with no due process generates alienation and frustrations among those powerless to appeal disciplinary actions.

A. POWERS AND PURPOSE

1. Every school shall have a Mediation Committee, which shall act as a system through which a student may appeal disciplinary action against him where informal attempts to resolve problems have not been successful. The committee may recommend any other solution, such as changes of particular classes, consultation with district psychologist, or other personnel, or other appropriate measures to resolve conflicts.
2. The burden of proving said disciplinary action was appropriate is the responsibility of the administrator involved.

B. COMPOSITION

The Mediation Committee shall consist of students, teachers, parents and a representative from the administrative staff of the school. The selection and term of office of each member of the Mediation Committee shall be as follows:

1. Student Representatives
    a. Number: There shall be two student representatives on the Mediation Committee. One shall be a male and one shall be a female.

       Selection: Each student representative shall be selected at random from the entire student body of the school. Upon adoption of this disciplinary policy the student body president of each school shall conduct the selection of the names of the first two members of the committee in a manner which shall be as random as possible. Thereafter, the student representatives of the committee shall select their successors in a random fashion from the entire sutdent body one week before the expiration of their term of office. If the student selected refuses to serve on the committee, another name shall be selected in the same manner.

    b. Alternates: Two alternate student representatives shall be selected at the same time and in the same manner as the regular student representative's. One alternate shall be a male and one shall be a female. In the event that the regular student representative is unable to serve upon the Mediation Committee during his term of office, the alternate of the same sex shall serve, upon request of the regular representative.

    c. Term of Office: Each student representative shall serve for nine weeks (a report card period).

COMMENT:

It was the feeling of the committee drafting this proposal that a method of selecting the student representatives as closely approximating the selections of a jury would provide the most impartial means of selection. Limitation of the term of office of each student representative will provide a more representative composition of the student component of the committee and prevent power struggles on the committee by a continual changing of membership. Election of the student representatives because of the tendency for particular students to be elected because of their popularity.

2. Parent Representatives
    a. Number: There shall be two parent representatives on the Mediation Committee. One shall be a male and one a female.
    b. Selection: Parent representatives shall be selected at an election conducted by the PTA or any other viable parent's organization at or about the school. Any parent of a student enrolled may submit his name as a condidate regardless of whether he is a member of the group holding such elections.
    c. Alternates: Two alternate parent representatives shall be selected at the same time and in the same manner as the regular parent representative. One alternate shall be a male and one a female. In the event the regular representative is unable to serve upon the Mediation Committee during his

term of office, the alternate of the same sex shall serve upon request of the regular representative.

COMMENT:

An alternate method of selecting the parent representatives would be to solicit the names of parents willing to serve upon the committee and selecting the representatives on a random basis from the names submitted.

d. Term of Office: Each parent representative shall serve for nine weeks.

3. Teacher Representatives

a. Number: There shall be two teacher representatives on the Mediation Committee. One male and one female.

b. Selection: Each teacher representative shall be selected at random from the entire full-time teaching staff of the school. Upon adoption of this disciplinary policy, the principal of each school shall conduct the selection of the names of the first two members of the committee in a manner which shall be as random as possible. Thereafter, the teacher representatives shall select their successors in a random fashion from the entire full-time teaching staff of the school two weeks before expiration of their term of office. If the teacher selected refuses to serve on the committee, another name shall be selected in the same manner.

c. Alternates: Two alternate teacher representatives shall be selected at the same time and in the same manner as the regular teacher representatives. One Alternate shall be a male and one shall be a female. In the event the regular teacher representative is unable to serve upon the Mediation Committee during his term of office, the alternate of the same sex shall serve upon request of the regular representative.

d. Term of Office: Each teacher representative shall serve for nine weeks.

4. Administrative Representative

   a. Number: There shall be one administrative representative on the Mediation Committee.

   b. Selection: The principal of the school shall designate a member of his administrative staff to serve as secretary and ex-officio member of the Mediation Committee or he may appoint himself to serve in that capacity.

   c. Term of Office: The administrative representative shall serve for nine weeks.

   d. Duties: The administrative representative shall serve as secretary and ex-officio member of the Mediation Committee. The administrative representative shall have a vote on the Committee only in the case of a tie vote.

5. Proceedings Before the Mediation Committee:

   a. The Mediation Committee shall have the power to hold a hearing or rehearing in any of the following cases.

      1) In every case involving a teacher initiated student removal for one class period or more where requested by the student.

      2) Upon the application of any student who believes he has been wrongfully disciplined by any school official.

3) In other appropriate matters involving students when requested by student.

b. Procedures

1) Written notice of charges: Each student charged with misconduct shall be given written notice of the charges against him and the facts upon which these charges are based at least two days previous to his hearing before the Mediation Committee.

2) Evidence: The decision of the Mediation Committee shall be based solely upon the evidence which is produced at the hearing. Both parties shall have the right to tell their side of the dispute, to call other witnesses, and question opposing witnesses. The committee may call and question any witness it so desires.

3) Representation: The student may be represented by any person of his choice at the hearing before the Mediation Committee.

4) Findings: The committee shall make written findings indicating the basis for its decision. A majority of the committee shall make the determination.

5) Time: The decision of the committee shall be made as soon as possible, and in no case later than 48 hours after the hearing has been completed.

6. Abstention:

any member of the Mediation Committee who believes, because of past or present relationship with any of the parties, that he cannot render a fair and unbiased judgement, shall remove himself from voting in said case. In such a case his alternate member shall replace him as a voting member. If a member fails to voluntarily remove himself, the student shall have the right to request an alternate to serve in his place.

7. Quorum:

No action may be taken except by vote of a majority (four persons) of the committee. At least one student, parent, and teacher representative must be present at all meetings of the committee.

8. Closed Hearings:

Upon request of the student, a hearing may be held in closed session. Otherwise, hearings shall be public.

9. Time of Meeting:

Meetings shall be set by the committee as necessary.

10. All statements made by people at the Mediation Committee hearing shall be duly recorded at the request of the student. Such information shall be made available to the Board of Education. All official records of the School Mediation Committee shall be kept and filed.

IV. CITY-WIDE MEDIATION COMMITTEE

A. POWERS

The City-Wide Mediation Committee shall have the power and the responsibility to:

1. Hear appeals by teachers regarding decisions by the School Mediation Committee to place records of committee decisions in teachers' personnel files.
2. Ratify all decisions by School Mediation Committees which are required to be ratified or to hold a full hearing on cases it does not ratify.
3. Make decisions on expulsions - subject to appeal to the Board of Education - exclusions, and disciplinary transfers.

B. COMPOSITION

Students: There shall be two senior high school students and one junior high school student. Students shall be selected from the On-Site School Committee in each school. In a case where a Site Council does not exist, the student shall be selected by the officers of the student body government. High schools and junior high schools sending representatives shall be rotated every semester.

Board of Education Representative: The Board of Education shall appoint two people to the City-Wide Mediation Committee:

1. One shall be a member of the Board of Education or a designated representative of the Board of Education.
2. One shall be a parent representative selected by the Board of Education.

Teachers: Two teachers shall be appointed by the superintendent of the Secondary Division of the San Francisco Unified School District.

Administrator: One administrator shall be appointed by the San Francisco Association of School Administrators.

School Psychologist: Two school psychologists shall be appointed by the Guidance Service Center.

C. PROCEDURE

Meetings of the City-Wide Mediation Committee shall be conducted in a manner similar to those of the School Mediation Committee. The City-Wide Mediation Committee shall meet at least once every week when school is in session.

3/25/71

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V. Models Prepared by Students or Lawyers

B. Model Codes

SAINT LOUIS UNIVERSITY

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MODEL HIGH SCHOOL DISCIPLINARY PROCEDURE CODE

Final Draft

Article #1 - Preliminary Procedure

§1 No student shall be suspended, transferred or expelled, by the School Board or any of its agents, unless the requirements of this Code are specifically and completely followed. The provisions of this Code shall not apply to non-disciplinary transfers of students.

Comment: This Code is intended to govern only the serious disciplinary actions specified. Thus, discipline such as reprimands or even the removal of a student from a classroom by a teacher for the remainder of the class period are not circumscribed by this Code. However, it is intended that with regard to the serious disciplinary actions specified, a failure to comply with this statute in all respects makes the disciplinary actions statutorily impossible. This should not be one more "rights" Code to which only lip service is given.

§2 Where the principal determines to impose any disciplinary action regulated by this Code, he may either:

a) temporarily suspend the student under the provisions of §3 of this Code; or

b) invoke the hearing procedure provided for in Article II of this Code.

The implementation of either of these alternatives with regard to a particular factual incident shall preclude the use of the other.

Comment: "Principal" is used here and throughout because that office usually weilds the power which is being structured. Substitutions based on local conditions are easily made.

§3 The principal of a school may temporarily suspend any student, where the continued presence of the student at the school at that time will be substantially disruptive of the physical or educational interests of the other students. No temporary suspension shall continue past the opening of the second regular school day after the day on which the temporary suspension begins, or be renewable. Where the principal temporarily suspends any student he shall immediately, either in person or by certified mail, give both to the student and to his parent or guardian, a written notice which shall include, but not be limited to, a description of the act or acts upon which the temporary suspension is based, and the duration of the temporary suspension which has been imposed. The imposition of a temporary suspension pursuant to this section shall preclude any other disciplinary action based upon the same factual incident.

Comment: This section is, frankly, a sop to principals. The hope is to allow them to deal with emergencies, where feelings are running high, without imposing serious punishment upon any student. Too often in the past students have been scapegoats for anger and frustration existent throughout a school. Here the principal can "punish," even, if need be, to "save face," without doing serious damage to the student. The high procedural cost of an Article II proceeding should further encourage the principal to utilize this section. Of course the benefit to the student (e.g. in terms of future earnings or in terms of future likelihood of being labeled "delinquent" or "criminal") of not having serious disciplinary action taken against him cannot be overemphasized.

Some present statutes (e.g. §10601 of the Calif. Educ. Code) give a teacher the power to suspend a student for two school days for "good cause." I have not provided for anything of this nature in this statute because I can think of no reason why a teacher has any interest in the whereabouts or the presence of a student in the school beyond the presence of the student in that particular teacher's classroom. Teachers will, without regard to this statute, still be able to evict a child from their classroom and order him to the principal's office. I can see no reason to give them any further power.

§4 The principal shall have the sole power to initiate proceedings to suspend, transfer, or expel any student. Except as provided in §3, this process shall be commenced by the giving of notice under the provisions of §6 of this Code. Where the principal has given notice pursuant to §6 of this Code, and where the principal further determines that the continued presence of the student in the school at that time will be substantially disruptive of the physical or educational interests of the other students, the principal may suspend the student pending a hearing.

No suspension pending a hearing may continue beyond the beginning of the sixth regular school day after the day on which the suspension pending a hearing begins, or beyond the time of the hearing, whichever comes first, except as provided in §9 of this Code.

Comment: The conflict upon which I have tried to work in this section is between reducing the amount of time during which a student will be forced to remain out of school and circumscribing the discretion to be placed in the hands of the principal. It seems to me that the only way to effectively limit the discretion of the principal is to take the decision entirely out of his hands. However, giving the decision to another person or to a Hearing Board would force a delay in the hearing and would probably tend to keep a student out of school for a greater length of time. I view a long period out of school as a more serious harm to a student than placing five days of discretion in the hands of the principal.

One problem with this section is that it might be perceived as a barricade to a non-disciplinary transfer (e.g. to achieve a racial mix within particular schools.) The Code is not intended to apply to non-disciplinary transfers of students between schools within a district.

§5 No student shall be suspended, transferred, or expelled, except as provided for in §3 of this Code, by the School Board or any of its agents, except for the violation of any of the following regulations:

a) assault or battery upon any other person on school grounds;

b) continued and repeated wilful disobedience of school personnel legitimately acting in their official capacity, which results in a disruptive effect upon the education of the other children in the school; or,

c) possession or sale of narcotic or hallucinogenic drugs or substances on school premises.

Copies of these regulations shall be sent to all students, as well as to their parents or guardians, at the beginning of each school year.

Comment: The intent here was to specify every reason for suspending, transferring, or expelling a student from a school. If it is felt that there is any basis not included here which is subst tial enough to justify serious disciplinary action, it should be specified. Four other possibilities worth consideration are: 1) academic dishonesty including cheating or plagiarism;

2) theft from or damage to institution premises or property;

3) intentional disruption or obstruction of the educational function of the school;

and, 4) possession of firearms.

Additionally, provision might be made for a situation where continued conflict exists between a student and a particular teacher without this conflict having led to the initiation of disciplinary proceedings by the principal. One section of a Code might provide for a conference to adjust this type of situation. This conference might include, for example, the teacher, the student, the parents, and the school counselor, and be held after a specified number of times in which the teacher has removed the student from the class and forced him to report to the principal. Where the conflict is not based upon any larger problem than a clash of values or personality between teacher and student, it might be provided that, where possible, the student merely be transferred to another class so that no loss of time or credit would be forced upon the student merely because he is in an inferior status position compared to the teacher.

Article 2 - Hearing Procedure

§6 Prior to the imposition of any suspension, transfer, or expulsion upon any student, except as provided for in §3 above, the principal shall, either in person or by certified mail, give to the student and to his parent or guardian a written notice which shall include, but not be limited to:

a) a description of the alleged act upon which disciplinary action is to be based with reference to the §§ of §5 of this Code which allegedly has been violated;

b) the nature of the disciplinary action which is sought to be imposed upon the student;

c) the time and place at which the hearing, provided for in this Article, shall take place;

and, d) a statement of the student's rights at the hearing, including, but not limited to, the right to counsel, the right to counsel at School Board expense where the student is indigent, and the right to confrontation and cross-examination of witnesses.

Comment: If the format of this "notice" provision remains one of minimum requirements, it might also be appropriate to include a list of the community resources who might serve as representatives for students. Where counsel is paid for by the School Board, as this Model provides, this would probably not be necessary. However, if the statute were amended so as to allow representation for the student but not to compel the School Board to pay for it where the student was indigent, the inclusion of a provision of this nature would seem critical. At a minimum it should inform the student of legal services offices, CAP agencies, law student representation projects, etc.

It has been suggested that, prior to a regular hearing as provided for in the next section, a conference be held among the child, the parents or guardian, and the principal. The purpose of this conference would be to discuss the basis for the proposed disciplinary action. One advantage of this would be that it would set an additional roadblock in the path of the principal considering disciplinary action. A disadvantage, however, is that the dynamics of this type of meeting would tend to allow the principal to confirm in the parents' minds the "wrongness" of the child. Thus, it would tend to diminish the support which the child should be receiving from the parent. Finally, a conference of this nature might better be held long before the principal considered using the serious disciplinary measures which this Code regulates.

§7 Prior to the imposition of any suspension, transfer, or expulsion upon any student, except as provided for in §3 above, a hearing shall be held by a Hearing Board to determine whether the imposition of the disciplinary action proposed by the principal is warranted. Except as provided in §9 of this Code, this hearing shall be held within five school days of the date on which written notice, pursuant to §6 of this Code is given.

The Hearing Board shall consist of eight members, the presence of six of whom shall constitute a quorum, to include:

a) two teachers, to be selected annually from the faculty of the school by the faculty of the school;

b) two parents of students at the school, to be selected annually by and from the parents of the students of the school;

c) two administrators from the school, appointed by the School Board;

and, d) two students selected annually from the student body by the students.

Wherever possible, no person shall serve on the Hearing Board for more than one year consecutively. A student may elect to have the proceedings of the hearing kept confidential. A student may also elect to have his hearing conducted solely by the two teachers and the two administrators as provided for in §§ a and c above, and to have the proceedings of the hearing kept confidential. This election may be made by the student at any time prior to the hearing. Such an election by the student shall not affect any of his other rights under this Code.

Comment: The principle upon which this Hearing Board is structured is one of equalization of power among competing interests. The four groups represented all seem to have different interests to protect (although all would probably continue to propagate the myth that they "had only the student's interests at heart"). Recognition of these differing interests through the grant of power to them seems to me the most just solution.

Four other possibilities for the filling of the "hearing board" function were considered. Though none of these seemed as fair as the Hearing Board proposed, all have advantages in certain situations, and are certainly preferable to most current practice. All of these are based upon the model of a hearing examiner. The difference in proposals depends upon where the examiner comes from.

The four possibilities are listed, with reservations about their adoption appended;

1) hearing examiner from voluntary panel of the bar - how do we convince attorneys to volunteer for this when, particularly in rural communities, we are hard pressed to find volunteers to represent indigents in criminal cases?

2) hearing examiners from degree candidates in colleges having elementary and secondary school curricula - how do we convince them to perform this function? are the colleges close enough to the schools to make this feasible? are they perhaps already institutionally biased?

3) where one exists, the school district ombudsman as hearing examiner - would this compromise the possible effect of other things the ombudsman might be trying to accomplish?

4) an examiner agreed upon each time by the student and the school - does the student remain in school until an examiner is selected? can a student be the equal of a principal in the bargaining which would have to occur on the choice of an examiner? what if no agreement could be reached on an examiner?

Again, any of these might prove excellent as alternatives, depending on local conditions, where the adoption of the Hearing Board is not politically feasible.

§8 No finding that disciplinary action is warranted shall be made unless a majority of the Hearing Board has first found, beyond a reasonable doubt, that the student committed the act upon which the proposed disciplinary action is based. Where this finding has been made, the Hearing Board, by majority vote, shall take such disciplinary action as it shall deem appropriate. This action shall not be more severe than that recommended by the principal.

Comment: The intent is to require two separate findings, each by a majority of the Hearing Board. Only after the Board has found that the student committed the act(s) charged, may it find that the proposed disciplinary action is warranted.

§9 Any student against whom disciplinary action is proposed is guaranteed the right to a representative of his own choosing, including counsel, at all stages of the proceeding against him. If a student is unable, through financial inability, to retain counsel, the School Board shall incur the cost of retained counsel for the child. In no case may a waiver of the right to counsel be made, except by the student with the concurrence of his parent or guardian.

The representative chosen by the student may have the hearing postponed for not longer than one week where necessary to prepare his case. Where the hearing is postponed at the request of the student's representative, and where, in addition, the principal finds that the presence of the student in the school during that period will be substantially disruptive of the physical or educational interests of the other students, the principal may continue the suspension pending the hearing of the student for one week or until the hearing takes place, whichever occurs first.

Comment: It seems likely that the right to counsel at school board expense will not pass any legislature, despite the value it would have for the student. If this is the case, the statute should at least provide for representation of the student by an adult of his choice, to include an attorney if one is available. The presence of counsel is critical to the protection of a student's interests in any politically charged situation. Further, the presence of a representative in addition to the party is critical when one considers the difficulty of maintaining one's control and reason in a highly charged situation such as a disciplinary hearing where one is vulnerable.

Waiver of counsel should be determined by the same standards now in use for juveniles in delinquency hearings. (See e.g., "Juvenile Waiver of Counsel," 4 Clearinghouse Review 404, 1971).

§10 No finding may be made except upon the basis of evidence presented at the hearing. Only evidence which is relevant to the issue being considered by the Hearing Board shall be presented. Only the kind of evidence upon which responsible persons are accustomed to rely in serious affairs may be relied upon by the Hearing Board. All testimony shall be given under oath. The Hearing Board shall state, in writing, its findings of fact as well as the basis upon which these findings were made.

Comment: Analytically, the intent of this §, in combination with §8 is to require two separate findings, and thus presentations of evidence. First, the Hearing Board should determine whether the student committed certain acts in violation of certain regulations, all specified in the notice sent to him. For this finding, only evidence relevant to that issue should be considered. Specifically, the student's "file," or other evidence of his "character" or past behavior, is specifically excluded from consideration.

Only if this first finding is made should the Hearing Board go on to consider whether the proposed disciplinary action is warranted. At this finding the principal would probably wish, and probably should be allowed, to present evidence tending to show why particular disciplinary action was recommended. Relevant portions of the student's "file" should be admissable for this purpose, assuming that the guarantee's of §11 are applicable to the contents of the file

The evidentiary standard is intended to be the new "relaxed" standard now advocated for all non-jury adjudicative hearings. The specific wording is derived from the standard proposed by K.C. Davis.

§11 The right to confrontation and cross-examination of witnesses is guaranteed to any student against whom disciplinary action is proposed.

Comment: It has been suggested that it is unrealistic to expect students to conduct their own cross-examination; that it would only produce a shouting match. This may sometimes be the case. However, the only just alternative may then be to limit the waiver of counsel to situations where the student is pleading guilty and hoping for mercy (i.e. where confrontation and cross-examination are not an issue). Of course, counsel's presence is valuable even in this situation. A study done for the President's Commission found the presence of attorneys in juvenile court to be most beneficial at disposition hearings. The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 103 (1967).

§12 The School Board shall have the right to compel the presence before the Hearing Board, upon reasonable notice and at reasonable times and places, of any of its employees, for the purpose of presenting evidence to the Hearing Board relevant to its inquiry. The School Board shall compel the presence of any person as provided hereinabove whose presence is requested by the student against whom disciplinary action is proposed. Nothing in this section shall be deemed to infringe upon the right of either the principal or the student to present the relevant testimony of any person whose presence cannot be compelled by the School Board. Further, nothing in this section shall be deemed to infringe upon the privilege against self-incrimination guaranteed to all persons by the Fifth Amendment to the Constitution of the United States.

Comment: There is some disagreement about whether or not the School Board can compel the presence of students at the hearing. I think not, unless perhaps the hearing were held during school hours. Having the hearing during school hours seems unreasonable, however, since many parents would have either to miss the hearing or miss a day's work. It seems more reasonable to have hearings in the evening, and not worry about the problem of compelling the presence of students. Presumably the School Board could delegate the power to compel the presence of employees to the superintendent without difficulty and perhaps even without formality.

§13 No suspension shall continue for longer than four weeks after the date of the hearing, or until the end of the semester, whichever comes first. Any student who is expelled may apply for readmission at the beginning of the subsequent school year and shall not be denied readmission on the basis of the expulsion.

§14 In the event that disciplinary action shall not be found warranted by the Hearing Board, all school records of the proposed disciplinary action, including those relating to the incidents upon which it was predicated, shall be destroyed.

Article #3 - Appeal Procedure

§15 The school board shall provide for a reliable verbatim record of any hearing before the Hearing Board, in the event of an appeal by the student.

§16 Any student against whom disciplinary action is found warranted by the Hearing Board shall be allowed to appeal, first, to the Circuit Court of the County in which the school is located, and then, through the proper appellate judicial channels of the state. The appeal shall be based upon the record of the hearing before the Hearing Board and upon the briefs and arguments of counsel for both sides. The court may, in its discretion, allow the student to remain in school pending the appeal.

Comment: An alternative to an appeal in the judicial system is an administrative appeal. See e.g. California Education Code, Section 10608 (Appeal as of right for parent or guardian to county board of education, whose determination is "final and binding"). This seems to me to be less costly but also much less politically desirable. A more desirable, and still inexpensive, alternative would be to have an ombudsman, employed either within the local school district or in the state Board of Education. The ombudsman would, of necessity, be required to be totally independent of the regular school hierarchy. If such an ombudsman existed, he could handle all appeals administratively and thus do away with the need to continually use the court system to handle appeals from Hearing Board decisions. Of course, as was noted earlier, having an ombudsman perform these functions might well compromise his effectiveness on other matters with which he is dealing.

The School Board shall, upon written notification that an appeal is being taken by a student, immediately prepare an accurate transcript of the record of the disciplinary hearing, a copy of which shall be provided to the student for use on appeal. The School Board shall be responsible for providing a copy of this transcript to the court for its use in considering the appeal.

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NATIONAL JUVENILE LAW CENTER

Securing Rights for Students

In the decision of the Supreme Court in *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969), according to the *Harvard Law Review*, "the Court adopted the view that the process of education in a democracy must be democratic." 83 *Harv. L. Rev.* 7, 159 (1969). This is an admirable objective which is not currently being met. Traditionally we have viewed rights of students in terms of "what can be allowed, given that the school must achieve certain objectives." Another viewpoint, however, is that students as people have certain rights whose promotion should be among the objectives of the school. The need now is to establish these as legal rights. If we take seriously the notion that the "process of education in a democracy must be democratic," then we must restructure, particularly in its disciplinary methods, the processes of the school to reflect this viewpoint.

In the past attorneys have attempted to secure procedural rights for students through the use of litigation in particular cases. The problem with using litigation in this situation is twofold. First, litigation is particular, and thus in order to establish rights over a large geographical area much duplication of effort is necessary. Second, as the Harvard Education Center has noted "judicial precedent does not clearly set up standards of procedural fairness which must accompany the deprivation of such a right." Harvard Center for Law and Education, ***Student Rights Litigation Materials*** (May 1970). Thus litigation, at best, can only insure that certain minimal constitutional safeguards are met. In the arbitration of what are essentially power disputes between competing interests, we need a solution based not upon the assumption that the value of school is inherent in the existing structure, but upon the notion that the process of education must be democratic.

Legislation, as opposed to litigation, is valuable for two reasons. It has the potential to change the law throughout a state, rather than only in one locality. Legislation also is able to go beyond the particular facts of any individual case to get at the roots of the problem of disciplinary procedure in a school by correcting the invalid assumptions upon which the present system is based.

Legal Services attorneys have generally not pursued the legislative avenue of law reform as a major goal. However, even those offices concerned with law reform have usually argued either that "it cannot be passed" or that "it cannot be passed in any acceptable form." At least with regard to the issue of school discipline, I submit that this over-simplifies the problem. It should be recognized that stirring up legislatures on this issue cannot hurt students. Students currently have very few rights in secondary schools. Recent litigation has established that certain minimum rights are guaranteed to students under the Constitution. Rights which have a constitutional underpinning cannot be undercut by legislative activity. Thus, efforts to secure legislation must either help the position of students or have no effect upon that situation.

Even where no legislation results, efforts to secure legislation are valuable because they serve an educational function. When we operate in the area of "law reform," we represent the all-encompassing interests of our clients as opposed to only those needs dramatized by a particular problem. Thus, attorneys engaged in law reform should be concerned to provide information to law makers and to secure legislation on all aspects of the problems of the poor.

Discipline in the schools provides a particular example of this need. School disciplinary action, by definition, punishes those who do not accept the status quo in schools. Yet in school systems where the status quo is defined by white middle-class culture, the large proportion of those who are disciplined must necessarily have backgrounds in the lower class or in racial minorities. It is not just the implementation of discipline in schools that is discriminatory; the imposition of the culture and values as the basis for discipline is itself discriminatory.

Attempts to secure legislation on school disciplinary procedure should attempt to educate both the legislators and the people of the state on a dual basis. On the one hand, it should be argued that arbitrary school discipline serves no useful educative function. Contrary to the rhetoric of our society, the process of these traditional disciplinary systems teaches not democracy, but rather obedience. However, we must also argue, as above, that discipline in the schools has a discriminatory impact upon students whose backgrounds are in the lower class or in racial minorities.

In a response to a request from a Legal Services program whose basic purpose is law reform we have begun to develop a Model High School Disciplinary Procedure. This model should be adaptable to local needs both as a statute to be introduced in state legislatures and as a code to be adopted by individual school districts. Many of the provisions of the model reaffirm traditional procedural concerns. Specifically, prior to the imposition of any serious disciplinary action upon a student, the student must receive a written notice of the charges against him, and must be given a hearing at which the evidence related to these charges is presented. The rights of confrontation and cross-examination of witnesses are affirmed. In recognition of the importance of remaining in school in today's society, the model provides for counsel for the student at school board expense in situations where serious disciplinary action is proposed. Further, the model completely separates serious disciplinary problems and emergency situations in the school. When faced with a particular situation where discipline may be required, the principal must choose immediately between using a one-time only, two-day suspension or between invoking the complete provisions of the model. Thus, the principal has a means to cope with emergency situations, but not at the expense of the long-term interests of the students.

In at least two ways the model goes beyond traditional procedural concerns. First, an attempt has been made

from 4 Clearinghouse Review No. 11.

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to limit through specification the grounds upon which serious disciplinary action against a student can be predicated. Second, an attempt has been made to have the composition of the hearing board which hears the student's case reflect the different interest groups within the school. The model provides for the board to be composed of two members from each of the following groups: students, faculty, parents, and administration.

The intent of this column, quite frankly, is to encourage efforts to secure the adoption of this model, or a reasonable substitute, either as a code at the school district level or as a state statute. Let us know if you are interested.

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Draft — for the Detroit Public Schools

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THE RIGHTS AND RESPONSIBILITIES OF STUDENTS

1.

In each junior high and high school there should be established an elective and representative student government with offices open to all students. The student government will establish reasonable standards for candidates for office. All students should be allowed to vote in annual elections designed to promote careful consideration of the issues and candidates.

a. The student government shall have the power to allocate student activity funds, subject to established audit controls and the by-laws of the Board of Education. The student government shall be involved in the process of developing curriculum and of establishing Rules and disciplinary policies.

b. Representatives selected by the student government shall meet at least monthly with the principal to provide their views, to share in the formulation of school student policies and to discuss school-student relations and any other matters of student concern.

2.

Official school publications shall reflect the policy and judgment of the student editors. This entails the obligation to be governed by the standards of responsible journalism.

3.

Students shall be allowed to distribute materials in public schools and around school grounds subject to compliance with the following guidelines.

A. SCHOOL SANCTIONED PUBLICATIONS

1. Distribution on School Grounds

a. Publications which are related to school programs, such as a student newspaper, will express, without any censorship, the views of the student editors of such publications.

b. Student groups will choose a faculty member, who upon approval of the principal, will be named as advisor to the group.

c. If the advisor and/or the principal express in writing that the material as published is not in his (their) opinion, the type of material that should be associated with the school; or if neither the advisor nor the principal is consulted within a reasonable time prior to publication, the publication must contain a statement that nothing within such publication is in any way connected with the school, its administration nor the Detroit Public School System. It shall then be regarded as a non-official publication and subject to the rules applicable to such publications.

d. Reasonable times and places will be established by the school administration, including occasional classroom time for announcements of such distribution, for distribution. Such times and places will be made known each year to students through the normal channels of communications.

2. Distribution off School Grounds

a. Students shall be free to distribute material off school grounds in accordance with the rules set forth under other provisions of this policy statement.

3. Exceptions to 1 and 2.

a. No sexually ponographic material shall be published or distributed.

b. No written or visual material of a commercial nature shall be published or distributed.

c. No publication whose main thrust, that is, taken en toto, is defamatory of a racial or ethnic minority shall be published or distributed.

d. If material may be shown to have caused or to be causing a material and substantial disruption of normal classroom activity, the principal or his designated agent may order distribution to be ceased and confiscate the material.

B. NON-SCHOOL SANCTIONED PUBLICATIONS OF STUDENTS AND OTHER GROUP

1. Distribution on School Grounds

a. Non-official publications will hereafter be deemed to bear no connection with any official student programs, any administrators of the school nor to the Detroit Public School System. Therefore all responsibility, legal or otherwise, will be solely borne by the publisher and his agents, including students and organizations acting as distributors.

b. Reasonable times and places for distribution will be established by the school administration. Classroom time will not be permitted for announcements of such distribution. Such times and places will be made known each year to students through the normal channel of communications and should be set forth in general guidelines of rules and regulations applicable in the school.

c. All exceptions in A (3) shall be applicable.

2. Distribution off school Grounds

a. Students shall be free to distribute material off school grounds.

b. Only exception A (3)(d) shall be applicable. Other criminal and penalty sanctions will continue to apply as if such publication were being distributed by non-students.

C. DISCIPLINE

1. Sanctions

a. Students who are responsible for official publications, and who consistently are prohibited from distributing material for what has been determined to be just cause, are subject to a motion by the principal to remove them from their office. A hearing must be held before the Assistant Superintendent of Pupil Personnel which complies with the students full due process rights.

d. Any student who is distributing what has been determined to be prohibited material may be ordered to cease distribution and the material may be confiscated. If the material has been confiscated under Exception No. 4 alone, it must be returned to the student when possibility of classroom disruption has passed.

c. Recognizing the chilling effect that more severe penalties might have on students' 1st Amendment Rights, no other penalty may be given for distribution of literature.

2. Appeal

Any such decision with regard to any of above exceptions may be appealed to the Assistant Superintendent in charge of Pupil Personnel. A Hearing must be held by the Assistant Superintendent within 5 school days, unless sooner time is warranted by the nature of the publication. If it is found that the interference with distribution was without cause students shall be allowed to immediately commence distribution. Such appeal shall not preclude judicial review.

D. DETROIT CITY CODE SECTIONS NOT APPLICABLE

1. Code

a. Detroit City Code, Offenses - Miscellaneous, Sec. 39-1-56, 57,58,59.

1. Nothing in the above sections shall be interpreted to prevent the distribution of material as proscribed in (A-C)

2. Principals only sanctions will be in accordance with

b. Detroit City-Code, Advertising and Signs, Art. 1, Sec. 3-1-1.

1. This section is not applicable to students 1st Amendment rights since it deals solely with commercial materials.

2. A principals only sanction will thus be in accordanc with A(3)(b) and C(1).

4.

Students may form political and social organizations, including those that champion unpopular causes, in conformity with state educatio laws.

5.

Faculty advisers shall be appointed by the principal subject to approval of the student group.

6.

Students have the right to determine their own dress, except where such dress is dangerous or so distractive as to clearly and substantially interfere with the learning and teaching process.

7.

Students shall receive annually upon the opening of school a publication setting forth rules and regulations to which students are subject. This publication sahll also include a statement of the rights and responsibilities of students. It shall be distributed to parents as well.

PUPIL SUSPENSION

7.

A. All possible alternative should be explored to help children resolve their adjustment problems before suspension is considered. In pursuit of this objective the school will assume the responsibility to refer pupils and their parents for specialized help.

If after all available remedial procedures have been applied, a pupil remains disruptive or maladjusted to the extent that he prevents other pupils from learning, his educational placement must be reevaluated. It is recognized that authoritative steps may be necessary but the approach should be supportive. In addition, each principal and teacher has a responsibility to identify pupils in need of help and to enlist the aid of the Board of Education's Pupil Personnel services as well as the resources available in the community. In addition, the principal should have available a sufficient record indicating that the pupil was recognized to be in need of extra support and the specific steps taken with parents and staff to help the child. The success or failure of these steps and other pertinent data should be an essential part of the record. However, there may be instances when the severity of a pupil's action will necessitate his suspension even though there be no previous history of disruptive behavior. The suspension procedure must be considered a part of the continuous educational guidance program for the child. Principals' and district superintendents' conferences, in relation to suspension, provide an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child. In the event that a student is suspended, plans must be made wherever possible for an alternative education for him.

B. Principal's Guidance Conference

1. When a serious problem arises regarding a pupil's behavior, a presuspension conference attended by the appropriate personnel should be called at an early stage in an effort to resolve the problem. It is expected that the parent will be included in efforts to help the pupil in school adjustment.

2. The principal should notify the parent to attend the presuspension guidance conference by a personal letter.

3. Inasmuch as this is a guidance conference held for the purpose of providing an opportunity for parents, teachers, counselors, suporvisors, et al., to plan educationally for the benefit of the child, attorneys seeking to represent the parent or child may not participate.

9.

A. Principal's Suspension

1. The school principal shall have emergency power to suspend a student from participation in regular school activity when he determines that the overt behavior of that student prevents the orderly operation of the class or organized activities or presents a clear and present danger of physical injury to school personnel or students. Such suspension shall be reviewed daily by the principal and shall last only so long as such conditions continue to prevail, but in no case shall exceed three days. No student shall be placed under emergency suspension pursuant to this section twice consecutively or more than twice in one school year. (Note: the above is an excerpt from the N.Y. Board of Education resolution)(adopted October 22, 1969)

2. Whenever a pupil under the care of the Bureau of Child Guidance, or another agency or therapist is to be suspended, the principal shall consult with the Bureau of Child Guidance, or agency or therapist prior to the suspension. The final decision remains with the principal.

3. The principal will remove the pupil from his class and keep him under supervision until the close of the school day or the arrival of the person in parental relation to the pupil.

4. The student's parents and the supervising assistant superintendent shall be immediately advised of any emergency suspension by telephone or telegram and the reasons therefor. The parents shall also be informed by certified mail, posted on the day of suspension,

that they have a right ~~to counsel~~ and ~~that their~~ presence is requested at school for a conference at which time the parent or their attorney or the student's attorney will be permitted the opportunity to discuss the findings leading to the student's removal from class, to question the complainants and to present additional information.

5. The conference will be conducted by the principal who will explain the basis of his decision to suspend and allow the parent and student to present their side of the story. The person in parental relation or his attorney or the student's attorney may ask questions of complaining witnesses. At the conference the parent and the principal may each have the assistance of up to two additional persons unless both parties agree to the presence of more persons.

6. Every effort should be made to secure the parent's attendance at the conference. If the person in parental relation to the child fails to respond or appear, the principal may refer the case to the district superintendent who shall take such action as he may determine. A conference cannot take place unless the parent or person in parental relation or parent's attorney or student's attorney is present.

7. A pupil suspended by the principal must be returned to the school by the principal no later than three days after the day of the principal's suspension. A permanent record of the hearing held in connection with the suspension will be maintained by the principal.

8. A pupil suspended by the principal under this section may not be suspended more than twice during the school year. These may not be consecutive periods of suspension.

9. At the end of every attendance reporting period of the school year, each principal will send to the District Superintendent:

The name of ~~each~~ pupil suspended
The reason for suspension
Date suspended
Date of principal's hearing
Date of pupil's return to class
Number of school days suspended

10. The suspended pupil will remain on the register of his school and will be marked absent in the roll book during the period of suspension.

11. If after meeting with the school principal, the parent or student believes that the suspension was not justified, either may first appeal to the supervising assistant superintendent and then to th Board of Education to review the suspension decision. The parent or student shall have the right to present evidence through either oral or written procedures.

12. After a decision on an appeal is reached, the parent shall be informed of the decision in writing and the reasons therefore. In any case where the supervising assistant superintendent or the Board of Education finds that the action of the student did not justify his suspension from classes, the student shall be exonerated and any record of disciplinary proceedings against him shall be expunged from his record, and he shall be given an opportunity to make up his classes without penalty.

B. District Superintendent's Suspension

1. When a principal believes that a student is so disruptive as to prevent the orderly operation of classes or otherorganized school activities, presents a clear and present danger of physical injury to other students or school personnel he shall refer such cases to the supervising assistant superintendent, giving him detailed summary of the student's behavior. No student, however, shall be punished by a principal's suspension and a district superintendent's suspension

for the same offense.

2. If the supervising assistant superintendent decides on the basis of information provided by the principal that suspension procedures are warranted, he shall schedule a hearing on notice of not less than ten school days by certified letter to the parents of the student. The notice shall designate the date, time and place of the hearing and shall contain a statement setting forth his right to be represented by counsel, the specific charges against the student including the rules violation, and the possible dispositions following the hearing.

3. The ten day period of notice is in keeping with the obligation to protect the student's right to a fair hearing. In emergency situations, the supervising assistant superintendent may shorten the period of notice, but in no case shall the period be less than three school days. When the notice period is shortened, the parent shall also be notified by telegram of the time and place for the hearing.

4. The hearing shall be conducted in full accordance with the requirements which provide that no pupil may be suspended for a period in excess of three school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and present evidence of his own, including witnesses. A written record must be kept of the hearing and the parent and student are entitled to one copy of such record.

C. Appeal

All suspensions may be reviewed by the Assistant Superintendent of the Office of Pupil Personnel Services or another member of the Central Administrative staff, so designated by the Superintendent.

Upon the request of the parent, the Assistant Superintendent will convene a hearing with a three member review panel to review and recommend to the Superintendent the disposition of the appeal. All parties to the suspension may be requested to present evidence. The hearing may be public at the request of the parent. The student may be represented by counsel. A written record will be made of all such hearings.

10.
TRANSFERS

A. Voluntary

1. If on referral to the supervising assistant superintendent is is mutually agreed upon by student, parent, principal and supervising assistant superintendent that a transfer would be beneficial to the student the matter will be forwarded to the Attendance Department for placement of the student in a new school.

B. Involuntary

1. The parent or student may not be forced to accept a transfer without a hearing to determine the need for such transfer.

2. This hearing and all its safeguards will be conducted pursuant to the guidelines set forth in Rule 7(B)(2)(3) and (4). It will be conducted before a representative of the Attendance Department with a right to appeal an adverse decision to the Region Superintendent.

EXCERPTS from Phay and Cummings

The following materials are excerpted from a pamphlet, Student Suspensions and Expulsions, Proposed School Board Codes Prohibiting Serious Student Misconduct and Establishing Procedures for Dealing with Alleged Violations, (55 pages) by Robert E. Phay and Jasper L. Cummings, Jr., of the Institute of Government, P.O.Box 990, University of North Carolina at Chapel Hill ($3.00), copyright, 1970, by the Institute of Government, University of North Carolina at Chapel Hill. Portions are reprinted here with the permission of the authors.

Introduction

Suspension or expulsion of a student is a serious action on the part of the school. (It can, however, be used in a context in which it is not punitive, e.g., to reduce tensions or to provide more time to deal with a problem than is immediately available.) In only a few situations can it be justified. One justified occasion is when a student's continued presence on the school grounds endangers the proper functioning of the school or the safety or well-being of himself or other members of the school community. Another is that rare instance when the suspension offers the only effective way of both communicating to the student that his conduct was unacceptable and emphasizing to his parents that they must become immediately involved and should accept a greater responsibility in helping the student meet school standards for acceptable conduct. . . .

School separation is a poor method of discipline. Students

*The Center for Law and Education wishes to express its gratitude to the authors for the permission to reproduce who misbehave usually are students with academic difficulties, and removal from the school almost inevitably adds to their academic problems. Sometimes expulsion is precisely what a delinquent student desires. Also, as the school loses contact with a student and loses its opportunity to work with him to eliminate his antisocial behavior, he may continue his misconduct in a way more dangerous to himself and others.

. . . When the classroom is not the place for him,. . . a problem child might be put into a special group where closer supervision and greater individual attention is available. Other appropriate community facilities like family service agencies, mental health clinics, or the public health service might be contacted and asked to work with the problem student. We also note that some children disrupt classes because they feel alienated or inadequate. For these children the school should try to offer learning in a way that builds self-confidence rather than destroys self-respect. . . .

Preventive measures, of which adopting written school codes on misconduct is one example, also need emphasis. The school can do much to eliminate conditions that produce or spark student misconduct. It should communicate to its students that their support and assistance is needed to make school a worthwhile experience. Students need to see that they benefit from an orderly school operation and that they, as members of the school community, have a responsibility and interest in promoting a good learning environment. School administrators can promote this positive aspect of student behavior by encouraging student participation in school planing, setting up a student committee on student behavior, establishing a school grievance procedure, and giving students a voice in matters concerning student life. Such actions, if not already taken, need to be implemented so that discipline problems can be eliminated before they arise. If a school has only the law and its rules to recommend it, it will surely fail. Rules and codes mean little without the good will and genuine support of the student body.

* * *

From: Part I, School Board Code Prohibiting Serious Student Misconduct

The following code sets forth school rules prohibiting certain types of student conduct that constitute major offenses. . .

* * *

Rule 1. DISRUPTION OF SCHOOL

A student shall not by use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance, or any other conduct intentionally cause the substantial and material disruption or obstruction of any lawful mission, process, or function of the school..

* * *

Rule 2. DAMAGE OR DESTRUCTION OF SCHOOL PROPERTY

A student shall not intentionally cause or attempt to cause substantial damage to valuable school property or steal or attempt to steal school property of substantial value. . . .

* * *

Rule 4. ASSAULT ON A SCHOOL EMPLOYEE

A student shall not intentionally cause or attempt to cause physical injury or intentionally behave in such a way as could reasonably cause physical injury to a school employee. . . on the school grounds. . . or . . . off the school grounds at a school activity, function, or event.

* * *

Rule 6. WEAPONS AND DANGEROUS INSTRUMENTS

. Option One

A student shall not knowingly possess, handle, or transmit any object that can reasonably be considered a weapon

(1) on the school grounds during and immediately before or immediately after school hours,

(2) on the school grounds at any other time when the school is being used by a school group, or

(3) off the school grounds at any school activity, function, or event.

This rule does not apply to normal school supplied like pencils or compasses but does apply to any firearm, any explosive including firecrackers, any knife other than a small penknife, and other dangerous objects of no reasonable use to the pupil at school

. Option Two

A student shall not knowingly possess, handle, or transmit a knife, razor, ice pick, explosive, loaded cane, sword cane, machete, pistol, rifle, shotgun, pellet gun, or other object that reasonably can be considered a weapon

(1) on the school grounds during and immediately before or immediately after school hours,

(2) on the school grounds at any other time when the school is being used by a school group, or

(3) off the school grounds at a school activity, function, or event.

This rule does not apply to normal school supplies like pencils or compasses.

Rule 7. NARCOTICS, ALCOHOLIC BEVERAGES, AND STIMULANT DRUGS

A student shall not knowingly possess, use, transmit, or be under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind. . .

Part II: Procedural Code for Dealing with Alleged Violations

* * *

The following procedural code provides for . . . constitutional requirements. It attempts to create a procedure that will produce a reliable determination of the issues while minimizing the adversary nature of the proceeding.

* * *

Section 3. LIMITATION ON PRINCIPAL'S POWER TO SUSPEND OR TO REQUEST A HEARING.

If the principal investigates a student's alleged misconduct and decides to take disciplinary action, he must investigate and take action on all alleged misconduct known to him at that time. Consequently, the most serious action he can take on his own authority for any and all misconduct by a particular student, known to him at any one time, is to give a five-day suspension.

* * *

Section 8. INITIATING LONG-TERM SUSPENSION OR EXPULSION

(a) Decision to Seek Suspension Over Five Days or Expulsion

If, after his investigation, the principal decides that a penalty more severe than any within his own authority is warranted, he may, with the approval of the superintendent, notify the Convener of the hearing board of their decision and ask that a hearing date be set. See (Section 10.) The principal must decide to do this and ask for a long-term suspension within five days after he learns of the misconduct.

* * *

Section 9. NOTICE

Whenever the principal seeks a long-term suspension or expulsion, he must give written notice to the student and his parents as soon as possible. Notice should be given no later than the end of the school day following the day of alleged misconduct. . . .

* * *

Section 12: WITNESS STATEMENTS

The principal shall make available in his office at least two days before the hearing the signed statements of all persons on whose information are based the charge against the student and the penalty suggested by the principal. These statements may be examined and copied by the student, parents, and representative. . . .

* * *

Section 13: AVAILABILITY OF THE STUDENT'S PREVIOUS RECORDS

Besides having access to the written statements that form the basis of evidence against the student, his parents or his representative shall have access to his previous behavior record and his academic record. If the school deems it necessary, the information contained in such records may be furnished to the parents or representative only on condition that they be explained and interpreted to the parents or representative by a person trained in their use and interpretation.

> Comment: These records will be at the disposal of the hearing board, but the student, his parents, and his representative also should have access to them so that they will have the opportunity to point out and emphasize relevant information contained therein. The utmost circumspection is required in their use. Their confidential nature should be stressed to all parties including the members of the hearing board.

* * *

Section 15: CONDUCT OF THE HEARING

(a) Closed Hearing

The hearing may be attended only by the hearing board members, the superintendent of schools, the principal, the student, the parents, and the student's representative. Witnesses should be present only when they are giving information to the board. The student may be excluded in the discretion of the board with the concurrence of the student's parents (or the representative when he acts in the place of the parents) at times when his psychological or emotional problems are being discussed. No one may be present with the board during its deliberations.

Comment: The presence of the parents and the representative will protect the student against the possibility of unfair hidden practices. Therefore, the use of an open hearing, with its attendant possible commotion and prejudice to the student or others, is unnecessary.

Student Mobilization Committee
19 Brookline Street
Cambridge, Massachusetts 02139
491-3070

HIGH SCHOOL BILL OF RIGHTS (drafted by the Student Mobilization Committee to End the War in Vietnam)

I. Students have the right to exercise all rights enumerated in the U.S. Constitution, the Bill of Rights, and all other amendments and those established by the U.S. Supreme Court.

FREEDOM OF POLITICAL ACTIVITY:

II. Students have the full freedom of political activity in the High Schools.

1. Students may form political and social organizations in the school, incl. those which champion unpopular causes & regardless of the political & social views of the organization.
2. Students have the right to full use of school facilities: bulletin boards, auditoriums, public address systems, mimeo facilities - to advertise their ideas & activities that take place inside & outside the high schools.
3. Students have the right to plan & carry out forums, assemblies, seminars, & other school programs in order to expand the educational process. These are to be carried out at a time chosen by the students. Speakers chosen by the students may not be rejected by administration or faculty.
4. Students have the right to distribute any leaflets, pamphlets, & political material freely inside & outside the school, & on school grounds without authorization of the principal or any body of the school administration or the Board of Education.
5. Students have the right to wear any symbol of their political beliefs, such as buttons, armband, & style of dress which expresses their opinions.
6. Students have the right to choose their own method of expressing their beliefs & refrain from saluting the flag or attending any assemblies which they so desire.
7. STUDENTS HAVE THE RIGHT TO STRIKE.

FREEDOM OF SPEECH AND PRESS

III. Students have the right to freedom of the press and speech.

1. Student publications must be controlled by the students & may in no way be censored by the administration or faculty. Editing will be done by the student editors. Any student organization has the right to have access to the school newspaper to advertise its ideas and activities.

DUE PROCESS

IV. Students have the right to due process.

1. Students have the right to a fair hearing which includes representation by counsel, with the right to question witnesses PRIOR to any disciplinary action. The hearing shall conform to all present laws pertaining to court procedure.
2. Students may not in any way be penalized by administration or faculty for any political ideas which they have or upon which they act.
3. Students have the right to receive annually upon the opening of school a publication setting forth all the rules and regulations to which they are subject. This publication shall contain a statement of student rights.
4. Students have the right to appeal any decision on a disciplinary action with a transcript of the trial.
5. Students and parents have the right to see their personal files at any time!

Free Elections

V. Students have the right to free elections in the Schools.

1. Students shall have the right to run in any school election for any office. There shall be an end to arbitrary administration requirements and screening of candidates.
2. All students in the school shall have the right to vote. Scheduling, of the balloting, shall occur at a time when all students are present during regular school hours. All candidates shall have the right to wage a real campaign with full use of school facilities to freely advertise their full election platform.

No War Machine

VI. Students have the right to end high school complicity with the war machine.

1. Students have the right to be free from the presence of federal agencies not involved in education.
2. There shall be an end to all military programs and recruiting, like ROTC, in the high schools.

3. There shall be an end to the use of police to settle disputes in the schools.

VII. Students have the right to help determine curriculum and evaluate their teachers.

1. There shall be an end to the tracking system.
2. There shall be an end to discrimination on the basis of race or sex.

Draft, 1970

EXCERPTS University of Oregon, The Code of Student Conduct as revised July 1, 1970

F. University Appeals Board (March 4, 1970)

1. The University Appeals Board, by faculty legislation and by delegation of the President of the University, is the final appeals body under the Student Conduct Code.

2. The Board shall consist of three student members recommended by the President of the ASUO, and three faculty members, each a member of the University community in good standing, and shall be appointed by the President of the University. A quorum shall consist of two students and two faculty members. Terms of membership shall be one year from the time of appointment. Members may be reappointed, but no member may serve more than two consecutive terms. The President of the University may appoint temporary members to the Board to serve during such times as are necessary to assure full membership of the Board. The Board shall elect its own chairman.

3. In any case the Student Conduct Committee may appoint one of its members to serve as an additional non-voting member of the University Appeals Board. The presence of this member will not affect the Board's quorum.

4. The Board shall establish rules of procedure for itself; however, an affirmative vote of four members of the Board shall be necessary to overrule a decision of a lower court or to find that a violation has occurred in cases in which no lower court has made a decision. Inability of the Board to make an affirmative decision to overrule or find that a violation has occurred shall be deemed a decision to affirm or find no violation.

EXCERPTS continued..... University of Oregon, The Code of Student Conduct
as revised July 1, 1970.

G. Student Tribunals

1. The President of the University shall appoint five members to a Senior Court Panel, no more than two of them from the faculty and the rest from the Student Body. The student members shall be recommended by the President of the Associated Students. The appointments will be for one year, but members may be reappointed, and the President is urged to preserve continuity of membership from year to year. Senior Court Panel members shall be selected for their knowledge of the Student Conduct program in general, and for their understanding of the operation of the Student Court in particular.

The Senior Court Panel will select an impartial system for choosing a court for each case and will be responsible for formulating rules of practice and procedure in hearings under this Code. Such rules are subject to review and revision by the University Appeals Board.

2. The President of the University shall appoint a Panel of Associates. The size of this panel shall be determined by the Student Conduct Committee, but no more than one-third of its members shall be from the faculty. The student members shall be recommended by the President of the Associated Students.

3. A student Court shall consist of three members, at least two of whom shall be students. One member of each student court shall be chosen from the Senior Court Panel, and this member will be the Chairman of the Student Court. The remaining members of the Student Court may be chosen from either the Senior Court Panel or the Panel of ASsociates. The jurisdiction of the Student Court shall be determined by the Student Conduct Committee, and the procedural rules will be established by the Senior Court Panel under the supervision of the University Appeals Board.

EXCERPTS continued..... University of Oregon, The Code of Student Conduct
as revised July 1, 1970.

4. A Student Court shall decide on all matters of fact, on the ultimate question of whether the Code has been violated, and on the sanction to be imposed, by majority vote. Decisions on procedural matters (e.g. on the admissibility of evidence) will be made by the Chairman of the Court. The Chairman will also decide which are matter of substance and which are matters of procedure, though on such decisions he may well seek the opinion of the other members of the court before ruling. A decision of the Chairman of the Court under this section can be reviewed only by appeal to the University Appeals Board.